

OKLAHOMA
OIL AND GAS LAWS

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WALLACE

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Oklahoma Oil and Gas Laws

INCLUDING ALL OKLAHOMA LAWS OF A GENERAL
NATURE CONTAINED IN REVISED LAWS OF
OKLAHOMA 1910 AND SESSION LAWS OF
1910-11, 1913, 1915, 1916, 1917, 1919 AND
1921 RELATING TO OIL AND GAS.

ALSO DECISIONS OF OKLAHOMA CITING AND CONSTRUING
SUCH STATUTES AND SESSION LAWS, INCLUDING VOLUME
82 OF THE OKLAHOMA REPORTS, WITH PACIFIC
REPORTER CITATIONS INCLUDING VOLUME 205.

CONTAINS A COMPLETE DIGEST OF ALL OIL AND GAS CASES
DECIDED BY THE OKLAHOMA SUPREME COURT, AND OKLA-
HOMA CASES DECIDED BY THE FEDERAL COURTS,
INCLUDING VOLUME 82 OKLA. REPORTS, 205 PAC.
REPORTER, 276 FEDERAL REPORTER, AND
252 U. S. SUPREME.

ALSO RULES AND REGULATIONS OF CORPORATION COMMISSION
ON OIL AND GAS AND CAREFULLY SELECTED FORMS.

By
LEWIS A. WALLACE
Of the Okmulgee, Okla., Bar

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PREFACE.

The purpose of this work is to provide for the Legal Profession, Oil Men and Public Officers, an accurate and quick reference to all Oklahoma laws relating to oil and gas, and laws regulating pipe line companies doing business within this State. It is gratifying to know that the Legislature and Courts of Oklahoma have kept pace with the rapid development of our oil and gas resources. This is evident from the fact that at least seventy-five per cent of our laws on the subject have been enacted since the adoption of the Revised Laws of 1910; and at least fifty per cent of the statutes contained in the code revision have been modified, amended or repealed by subsequent legislation. Also, in recent years numerous decisions have been handed down by our Supreme Court construing the oil and gas laws. These various changes only prove the real need of a comprehensive and well-annotated collection of the laws of this State relating to oil and gas; and this need, it is hoped, will be supplied by this volume.

The present work is not intended as a treatise, but as a complete compilation of all Oklahoma laws of a general nature applicable to the oil and gas industry of the State. It includes legislation on the subjects of Pipe Line Laws, Inspection and Conservation Laws, Gross Production Tax, Workmen's Compensation Laws, and other important subjects. Another feature of the work is the publication of all rules and regulations of the Oklahoma Corporation Commission relating to oil and gas; as well as many carefully selected forms.

The work includes all laws on the above-named subjects contained in the Revised Laws of Oklahoma 1910, and in the Session Laws of 1910-11, 1913, 1915, 1916, 1917, 1919 and 1921. The author has endeavored to furnish a complete list of all Oklahoma decisions citing or construing these various statutes and session laws, up to and including Volume 82 of the Oklahoma Reports, with the Pacific Reporter citations up to and including Volume 205. Where an Oklahoma case has been affirmed or reversed by the U. S. Supreme Court, the citation is given.

The work also contains a digest of all oil and gas cases decided by the Oklahoma Supreme Court, and Oklahoma cases decided by the Federal Courts, including Volume 82 Oklahoma Reports, 205 Pacific Reporter, 276 Federal Reporter, and 252 U. S. Supreme Court Reports.

Respectfully,

LEWIS A. WALLACE.

Okmulgee, Okla., September 15, 1922.

CHAPTER I

LEASING OF SCHOOL AND OTHER PUBLIC LANDS.

- § 1. Commissioners of land office may lease.
- 2. Empowered to segregate.
- 3. Term of lease.
- 4. Provisions of lease.
- 5. Rules governing leases.
- 6. Liable to surface owner for damages.
- 7. Condemnation under certain conditions.
- 8. Disposition of funds.
- 9. Acts in conflict repealed.

§ 1. **Commissioners of Land Office May Lease.**—The Commissioners of the Land Office are authorized to lease for oil and gas purposes any of the school or other lands owned by the State of Oklahoma, which such commissioners may deem valuable for oil and gas, for the term of five years and as long thereafter as oil or gas may be produced therefrom in paying quantities, upon such terms and conditions and in such quantities as the commissioners shall by rules and regulations prescribe. Each such lease shall provide for the delivery to the State of a royalty of not less than one-eighth part of the oil or gas produced from the leased premises or in lieu thereof the payment to the State of the market value of said royalty interest, as the commissioners may elect. Such leasing shall be made by public competition after not less than thirty days' notice by publication in two newspapers authorized by law to publish legal notices, one of which newspapers shall be published at the State Capital, and the other in the county where the land is situated, such leasing shall be let by sealed bids and each lease awarded to the highest responsible bidder. Such oil and gas leases may be assigned only with the consent and approval of the Commissioners of the Land Office. Provided, that the commissioners have the right to reject any and all bids.

(S. L. 1917, p. 462, Sec. 1.)

§ 2. **Empowered to Segregate.**—The commissioners are empowered to segregate any of the school or public lands for mineral purposes which the commissioners may, by order entered of record, determine to be valuable for oil, gas or mineral purposes, and each agricultural, grazing or other lease of the surface rights or interest in any land so segregated shall reserve to the State, its lessees or grantees, the right to explore, drill and operate for oil or gas on such lands as well as the right to enter upon the said lands and enjoy the mining rights so reserved.

(S. L. 1917, p. 463, Sec. 2.)

§ 3. **Term of Lease.**—All oil and gas leases executed by the Commissioners of the Land Office shall be for a term of five years and as long thereafter as oil or gas may be produced in paying quantities; provided, upon the forfeiture, or cancellation or surrender, or expiration of lease by reason of its termination on account of the five years' limit, provided for in the "Enabling Act," or any other cause, the School Land Commissioners shall provide for the leasing of such land in the same way and in the same manner that the School Land Commissioners lease land which has never been leased. Provided, on such leases which are surrendered or which may expire or which have expired, the lessee or assigns shall have the value of the physical properties on such lease, which value shall be determined by a board of appraisers, especially appointed by the School Land Commissioners for the appraising of physical property of leases. Provided, no physical property valuation shall be attached or considered in the making of a lease on a tract consisting of more than 640 acres. If no well shall be completed upon any leased premises within one year from the date of the lease, the lessee shall pay to the State of Oklahoma an annual rental in advance of such sum per acre as the commissioners shall prescribe in the lease, which payment shall operate to defer the completion of a well during the year for which such rental payment is made.

(S. L. 1917, p. 463, Sec. 3.)

§ 4. Provisions of Lease.—All leases for oil and gas shall contain a provision to drill one well on each leased tract within one year from the date of such lease or on failure to complete such well to pay an annual rental per acre as hereinbefore provided. All such leases shall further provide that the lessee shall drill a sufficient number of wells upon the leased lands to offset all producing wells upon any adjoining or contiguous lands, and a further provision that the failure of the lessee to diligently and in good faith operate the leased premises for oil and gas to as full an extent as other lands are operated in the general oil and gas field where such leased lands are located shall forfeit all rights of the lessee under such lease. Each lessee shall execute a bond to the State of Oklahoma with sureties to the approval of the commissioners and in such sum as the commissioners shall prescribe, conditioned for the faithful performance of the provisions of the lease and for the payment of all recoverable damages which such lessee may cause to the property, crops or rights of the surface lessee. Each lease shall further provide that in the event the State shall at any time operate a refinery for the refining of crude petroleum or the extraction of any of its products or by-products, the State shall have the preference right to purchase and take the production or output of any oil or gas well at the prevailing market price thereof, upon the commissioners serving written notice upon the owners of any well, of the purpose and readiness of the State to take such production.

(S. L. 1917, p. 464, Sec. 4.)

§ 5. Rules Governing Leases.—The Commissioners of the Land Office may adopt and promulgate appropriate rules and regulations for carrying into effect the provisions of this act, but no restrictions or prohibitions against any bidder or prospective bidder shall be made other than as provided in this act.

(S. L. 1917, p. 465, Sec. 5.)

§ 6. Liable to Surface Owner for Damages.—The lessee, under any oil or gas lease executed by the Commissioners of the

Land Office shall be liable to the surface owner or lessee for all injury, damage or loss occurring to the surface interest, interest in such lands or to any building, crops or improvements, or other property, located upon or used in connection with said land.

(S. L. 1917, p. 465, Sec. 6.)

§ 7. Condemnation Under Certain Conditions.—Should the lessee or owner of the surface interest and the lessee of the oil and gas interest specified in this article be unable to agree upon the damage and loss sustained by such surface lessee or owner by such lessee of the oil and gas interests therein, the latter may condemn the same for such purpose under the law of eminent domain to like extent and in the same manner and upon the same procedure and remedies as is provided for the assessment of damages and compensation to the owner of the fee in case of condemnation for railway purposes.

(Sec. 7201, Rev. Laws 1910.)

§ 8. Disposition of Funds.—All funds arising from bonuses, royalties or rentals for oil and gas leases, shall be carried into and credited to the permanent funds for the use and purpose designated in the grant of such lands by Congress to the State of Oklahoma and all such funds shall be kept, handled and used in like manner as other moneys belonging to said permanent funds.

(S. L. 1917, p. 465, Sec. 7.)

§ 9. Acts in Conflict Repealed.—All acts or parts of acts inconsistent herewith, are hereby repealed.¹

(S. L. 1917, p. 465, Sec. 8.)

¹ Sections 7195 to 7203, Rev. Laws 1910, (except Sec. 7201) are in conflict with the provisions of the foregoing act and are therefore repealed.

CHAPTER II.

STATE MAY LEASE RIPARIAN OIL LANDS.

§ 10. Leasing authorized.

11. Mode of leasing.

§ 10. **Leasing Authorized.**—The Commissioners of the Land Office are hereby authorized to lease for oil and gas purposes all lands between mean high water mark in all streams or rivers of two chains or over; all such streams are declared the property of the State of Oklahoma.

(S. L. 1919, p. 293, Sec. 1.)

§ 11. **Mode of Leasing.**—Said lands are to be leased under the same provisions as the school and other lands of the State of Oklahoma.

(S. L. 1919, p. 293, Sec. 2.)

CHAPTER III.

STATE MAY LEASE PENAL OR ELEEMOSYNARY LANDS.

§ 12. Board of Affairs to lease.

§ 12. **Board of Affairs to Lease.**—The State Board of Public Affairs is hereby authorized to lease for drilling and development of oil or gas, or both, any of the lands belonging to the State, on which are located penal or eleemosynary institutions, or are connected with or a part of the lands of such institutions. Such leasing to be made by public competition after not less than thirty days' advertisement, as now provided by law for the leasing of other State or school lands for oil and gas purposes, and in such manner as said board may by rule prescribe. All such leasing must be on sealed bids and awarded to the highest responsible bidder, and for such period as said Board of Public Affairs may determine, provided said board may reject any and all bids. The oil and gas interest in such land hereby authorized to be leased, is to the extent and in the manner that a private owner of lands in fee, may in his own right, execute such lease or grant, and provided further, that such lease before becoming effective or having validity, shall be approved by the Governor of the State.

(S. L. 1917, p. 407, Sec. 1.)

CHAPTER IV.

COUNTY, TOWN OR SCHOOL DISTRICT MAY LEASE.

§ 13. Leases authorized.

14. How executed.

15. Repealing clause.

§ 13. **Leases Authorized.**—Any county, town, school district or township that now owns or may hereafter acquire any land, other than town or city lots, under the control of the board of county commissioners, board of town trustees, directors or board of education, is hereby authorized and empowered to enter into a valid contract to lease such land to any person, association or corporation for a term of years not to exceed ten years, for the purpose of constructing permanent improvements thereon, or for oil and gas development. This law does not apply to agricultural purposes.

(S. L. 1921, p. 214, Sec. 1.)

§ 14. **How Executed.**—The lease mentioned in the preceding section shall be executed only after notice by publication for two weeks in a newspaper of general circulation in the county in which the land is situated, and a public sale thereof to the highest and best bidder. Provided, that all leases heretofore executed by the board of county commissioners, board of town trustees, directors of school districts, or board of education, covering lands under their control, are hereby validated, and nothing in this act shall be construed to invalidate any such lease.

(S. L. 1921, p. 214, Sec. 2.)

§ 15. **Repealing Clause.**—All laws or parts of laws in conflict herewith, are hereby repealed.

(S. L. 1921, p. 214, Sec. 3.) This act repeals Chapter 179, Session Laws 1919, page 253, as same is in conflict herewith.

CHAPTER V.

GUARDIANS MAY EXECUTE LEASES.

§ 16. Guardian may lease for oil or gas purposes.

17. Former leases legalized.

§ 16. **Guardian May Lease for Oil or Gas Purposes.**—Guardians of infants and insane persons are hereby empowered to lease and grant mineral oil and mineral gas, in consideration of a royalty or part or portion of the production thereof, and under the same procedure in the county court, as now provided by law, where such consideration is money.¹

(Sec. 6547, Rev. Laws 1910.) Cited and construed: *Cabin Valley Mining Co. vs. Hall*, 53 Okla. 760, 155 Pac. 570, holding that a guardian may execute an oil and gas lease for a period of years extending beyond the minority of his ward.

§ 17. **Former Leases Legalized.**—All such leases and grants of mineral oil and gas heretofore made and confirmed by the county court, in consideration of a royalty, part or portion of the production thereof, are hereby legalized.

(Sec. 6548, Rev. Laws 1910.)

¹ "Rule 9.—No oil and gas, or other mineral lease, covering lands belonging to minors or incompetents, will be approved except after sale in open court to the highest and best responsible bidder. All petitions for the approval of oil and gas leases shall be filed at least five (5) days before the same are sold as provided herein and notice of such sale must be given by posting and by publication where publication is practicable, and shall be on ——— day of each ———". (Rule 9 of Supreme Court, 47 Okla., 171 Pac.)

CHAPTER VI.

ACT CREATING AN OIL AND GAS DEPARTMENT.

- § 18. Oil and gas department established.
- 19. Jurisdiction conferred upon Corporation Commission.
- 20. Rules and regulations for plugging wells.
- 21. Oil and gas inspection.
- 22. Fees of inspector.
- 23. Acts in conflict repealed.

§ 18. **Oil and Gas Department Established.**—The Corporation Commission is hereby empowered and authorized to create and establish an oil and gas department under the jurisdiction and supervision of the Corporation Commission, and is hereby authorized to appoint with the approval and consent of the Governor, a chief oil and gas conservation agent who shall have charge of the oil and gas department herein authorized.

(S. L. 1917, p. 385, Sec. 1.) Cited and construed: **Love v. Boyle**, — Okla. —, 180 Pac. 705, holding act constitutional.

§ 19. **Jurisdiction Conferred Upon Corporation Commission.**—All authority and duties now conferred upon the Corporation Commission or other department of the State government in reference to the conservation of oil and gas and the drilling and operating oil and gas wells and the construction and regulation of oil and gas pipe lines, are hereby conferred exclusively upon the Corporation Commission.

(S. L. 1917, p. 385, Sec. 2.)

§ 20. **Rules and Regulations for Plugging Wells.**—The Corporation Commission is hereby authorized to prescribe rules and regulations for the plugging of all abandoned oil and gas wells. The same shall be plugged under the direction and supervision of the conservation agents of the Corporation Com-

mission as may be prescribed by the Corporation Commission. All orders and regulations in reference to plugging wells shall be made after general hearing as now prescribed by law for the promulgation of orders by the Corporation Commission.
(S. L. 1917, p. 385, Sec. 3.)

§ 21. **Oil and Gas Inspection.**—Jurisdiction is hereby conferred upon the Corporation Commission to inspect all oils and liquids, the product of petroleum or other bituminous substances or into which the product of petroleum enters, by whatever name called, which may be or can be used for illuminating, heating, or power purposes, manufactured in this State or brought into it, before the same are consumed, used, sold or offered to be sold or disposed of to merchants, consumers, or other persons within this State, and the Corporation Commission is hereby authorized to appoint, with the approval of the Governor, oil inspectors, who shall perform the duties now prescribed by Chapter 96, Session Laws 1915, and to perform such other duties as may be required by general rules and regulations of the Corporation Commission.

(S. L. 1917, p. 386, Sec. 4.) Compare with Sec. 90 herein.

§ 22. **Fees of Inspector.**—The oil inspector hereby authorized shall receive the compensation now provided in Chapter 96, Session Laws 1915, for the inspection of oils and liquids.

(S. L. 1917, p. 386, Sec. 5.) Compare with Sec. 89 herein.

§ 23. **Acts in Conflict Repealed.**—All acts and parts of acts in conflict herewith are hereby repealed.¹

(S. L. 1917, p. 386, Sec. 6.)

¹ The provisions contained in the foregoing chapter, together with the rules and regulations of the Corporation Commission, with reference to the regulation and inspection of wells, have revised, amended or repealed the provisions of Sections 4319 to 4329, Rev. Laws 1910; therefore, said sections have not been compiled in this work, but have been omitted so as to avoid confusion.

CHAPTER VII.

WASTE OF NATURAL GAS PROHIBITED.

- § 24. Waste prohibited.
- 25. Waste defined.
- 26. Conservation of gas.
- 27. Excess gas supply.
- 28. Fair treatment by common purchaser.
- 29. Hearings before Corporation Commission.
- 30. Appeals to Supreme Court.
- 31. Regulations for prevention of waste.
- 32. Acceptance by pipe lines.
- 33. Duties of Mine Inspector unchanged.
- 34. Validity of act.
- 35. Penalties for violation.

§ 24. **Waste Prohibited.**—That the production of natural gas in the State of Oklahoma, in such manner, and under such conditions as to constitute waste, shall be unlawful.

(S. L. 1915, p. 398, Sec. 1.) Cited: *City of Pawhuska v. Pawhuska Oil & Gas Co.*, 64 Okla. 214, 166 Pac. 1058.
Love v. Boyle, — (Okla.) —, 180 Pac. 705.

§ 25. **Waste Defined.**—That the term waste, as used herein in addition to its ordinary meaning, shall include escape of natural gas in commercial quantities into the open air, the intentional drowning with water of a gas stratum capable of producing gas in commercial quantities, underground waste, the permitting of any natural gas well to wastefully burn and the wasteful utilization of such gas.

(S. L. 1915, p. 398, Sec. 2.)

§ 26. **Conservation of Gas.**—That whenever natural gas in commercial quantities, or a gas bearing stratum, known to contain natural gas in such quantity, is encountered in any well drilled for oil or gas in this State, such gas shall be confined to its original stratum until such time as the same can

be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating waters. Any unrestricted flow of natural gas in excess of two million cubic feet per twenty-four hours shall be considered a commercial quantity thereof; provided, that if in the opinion of the Corporation Commission, gas of a lesser quantity shall be of commercial value, said commission shall have authority to require the conservation of said gas in accordance with the provisions of this act; and provided, further, the gauge of the capacity of any gas well shall not be taken until such well has been allowed an open flow for the period of three days.

(S. L. 1915, p. 398, Sec. 3.)

§ 27. **Excess Gas Supply.**—That whenever the full production from any common source of supply of natural gas in this State is in excess of the market demands, then any person, firm or corporation, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the State, so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

(S. L. 1915, p. 399, Sec. 4.) Compare with Sec. 47 herein.

§ 28. Fair Treatment by Common Purchaser.—That every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this State, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm or corporation, shall be unable to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas, or in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade.

(S. L. 1915, p. 400, Sec. 5.) Compare with Sec. 48 herein.

§ 29. Hearings Before Corporation Commission.—That any person, firm or corporation, or the Attorney General, on behalf of the State may institute proceedings before the Corporation Commission, or apply for a hearing before said commission, upon any question relating to the enforcement of this act; and jurisdiction is hereby conferred upon said commission to hear and determine the same, said commission shall set a time and place when such hearing shall be had and give reasonable notice thereof to all persons or classes interested therein by

publication in some newspaper or newspapers having general circulation in the State, and shall in addition thereto cause notice to be served in writing upon any person, firm or corporation, complained against in the manner now provided by law for serving summons in civil actions. In the exercise and enforcement of such jurisdiction said commission is authorized to summon witnesses, make ancillary orders, and use such mesne and final process including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporations as now provided by law.

(S. L. 1915, p. 400, Sec. 6.)

§ 30. **Appeals to Supreme Court.**—That appellate jurisdiction is hereby conferred upon the Supreme Court of this State to review the orders of said commission made under this act. Such appeal may be taken by any person, firm or corporation, shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the Corporation Commission. Said orders so appealed from, may be superseded by the commission or by the Supreme Court upon such terms and conditions as may be just and equitable.

(S. L. 1915, p. 401, Sec. 7.)

§ 31. **Regulations for Prevention of Waste.**—That the Corporation Commission shall have authority to make regulations for the prevention of waste of natural gas, and for the protection of all natural gas, fresh water, and oil bearing strata encountered in any well drilled for oil or natural gas, and to make such other rules and regulations, and to employ or appoint such agents, with the consent of the Governor, as may be necessary to enforce this act.

(S. L. 1915, p. 401, Sec. 8.)

§ 32. **Acceptance by Pipe Lines.**—Before any person, firm or corporation shall have, possess, enjoy or exercise the right of eminent domain, right of way, right to locate, maintain, construct or operate pipe lines, fixtures, or equipments belong-

ing thereto or used in connection therewith, for the carrying or transportation of natural gas, whether for hire or otherwise, or shall have the right to engage in the business of purchasing, piping, or transporting natural gas, as a public service, or otherwise, such person, firm or corporation shall file in the office of the Corporation Commission a proper and explicit authorized acceptance of the provisions of this act.

(S. L. 1915, p. 402, Sec. 9.)

§ 33. **Duties of Mine Inspector Unchanged.**—That nothing contained in this act shall be construed to interfere with any duties now imposed by law upon the Chief Mine Inspector of the State or his deputies.

(S. L. 1915, p. 402, Sec. 10.) See Sec. 19 herein.

§ 34. **Validity of Act.**—That the invalidity of any section, subdivision, clause, or sentence of this act shall not in any manner affect the validity of the remaining portion thereof.

(S. L. 1915, p. 402, Sec. 11.)

§ 35. **Penalties for Violation.**—That in addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars (\$5,000.00), or by imprisonment in the county jail not to exceed thirty (30) days, or by both such fine and imprisonment.

(S. L. 1915, p. 402, Sec. 12.)

CHAPTER VIII.

WASTE OF CRUDE OIL PROHIBITED.

- § 36. Waste prohibited.
- 37. Production and sale regulated.
- 38. Waste defined.
- 39. Discrimination of purchaser prohibited.
- 40. Wells gauged.
- 41. Hearings before Corporation Commission.
- 42. Appeals to Supreme Court.
- 43. Penalty for violation.
- 44. State may secure receiver.
- 45. Validity of act.

§ 36. **Waste Prohibited.**—That the production of crude oil or petroleum in the State of Oklahoma, in such manner and under such conditions as to constitute waste, is hereby prohibited.

(S. L. 1915, p. 35, Sec. 1.) Act cited: *Love v. Boyle*, — (Okla.) —, 180 Pac. 705.

§ 37. **Production and Sale Regulated.**—That the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum is hereby prohibited, and the actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the United States at retail of the by-products of such crude oil or petroleum when refined less the costs and a reasonable profit in the business of transporting, refining and marketing the same, and the Corporation Commission of this State is hereby invested (vested?) with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided, and when so determined said commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general circulation in the State.

(S. L. 1915, p. 35, Sec. 2.)

§ 38. **Waste Defined.**—That the term “waste” as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. The Corporation Commission shall have authority to make rules and regulations for the prevention of such wastes, and for the protection of all fresh water strata, and oil and gas-bearing strata, encountered in any well drilled for oil.

(S. L. 1915, p. 36, Sec. 3.)

§ 39. **Discrimination of Purchaser Prohibited.**—That whenever the full production from any common source of supply of crude oil or petroleum in this State can only be obtained under conditions constituting waste, as herein defined, then any person, firm or corporation, having the right to drill into and produce oil from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply. The Corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply, within the State of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply, of such crude oil or petroleum, by any person, firm or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

(S. L. 1915, p. 36, Sec. 4.)

§ 40. **Wells Gauged.**—That for the purpose of determining such production, a gauge of each well shall be taken under rules and regulations to be prescribed by the Corporation Commission, and said commission is authorized and directed to make and promulgate, by proper order, such other rules and

regulations, and to employ or appoint such agents with the consent of the Governor, as may be necessary to enforce this act.

(S. L. 1915, p. 37, Sec. 5.)

§ 41. **Hearings Before Corporation Commission.**—That any person, firm or corporation, or the Attorney General on behalf of the State, may institute proceedings before the Corporation Commission, or apply for a hearing before said commission, upon any question relating to the enforcement of this act, and jurisdiction is hereby conferred upon said commission to hear and determine the same. Said commission shall set a time and place, when and where such hearing shall be had and give reasonable notice thereof to all persons or classes interested therein, by publication in some newspaper or newspapers having general circulation in the State, and in addition thereto, shall cause reasonable notice in writing to be served personally on any person, firm or corporation complained against. In the exercise and enforcement of such jurisdiction, said commission is authorized to determine any question or fact arising hereunder, and to summon witnesses, make ancillary orders, and use mesne and final process, including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporations, as now provided by law.

(S. L. 1915, p. 37, Sec. 6.)

§ 42. **Appeals to Supreme Court.**—That appellate jurisdiction is hereby conferred upon the Supreme Court in this State to review the action of said Commission in making any order, or orders, under this act. Such appeal may be taken by any person, firm or corporation, shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the Corporation Commission. Said orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and

remain in full force and effect until legally suspended or set aside by the Supreme Court.

(S. L. 1915, p. 38, Sec. 7.)

§ 43. Penalty for Violation.—That in addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars (\$5,000.00), or by imprisonment in the county jail not to exceed thirty (30) days, or by both fine and imprisonment.

(S. L. 1915, p. 38, Sec. 8.)

§ 44. State May Secure Receiver.—That in addition to any penalty imposed under the preceding section, any person, firm or corporation, violating the provisions of this act, shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the State through the Attorney General, or any county attorney, but such receivership shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this act.

(S. L. 1915, p. 38, Sec. 9.)

§ 45. Validity of Act.—That the invalidity of any section, subdivision, clause or sentence of this act shall not in any manner effect the validity of the remaining portion thereof.

(S. L. 1915, p. 39, Sec. 10.)

CHAPTER IX.

OWNERSHIP OF GAS DEFINED AND OUTPUT RESTRICTED.

- § 46. Ownership defined.
- 47. Restrictions on output.
- 48. Purchasers of output.
- 49. Penalty for taking more than share of gas.
- 50. Punishment for violations of act.

§ 46. **Ownership Defined.**—All natural gas under the surface of any land in this State is hereby declared to be and is the property of the owners, or gas lessees, of the surface under which gas is located in its original state.

(S. L. 1913, p. 439, Sec. 1.)

§ 47. **Restrictions on Output.**—Any owner, or oil and gas lessee, of the surface, having the right to drill for gas shall have the right to sink a well to the natural gas underneath the same and to take gas therefrom until the gas under such surface is exhausted. In case other parties, having the right to drill into the common reservoir of gas, drill a well or wells into the same, then the amount of gas each owner may take therefrom shall be proportionate to the natural flow of his well or wells to the natural flow of the well or wells of such other owners of the same common source of supply of gas, such natural flow to be determined by any standard measurement at the beginning of each calendar month; provided, that not more than twenty-five per cent of the natural flow of any well shall be taken, unless for good cause shown, and upon notice and hearing the Corporation Commission may, by proper order, permit the taking of a greater amount. The drilling of a gas well or wells by any owner or lessee of the surface shall be

regarded as reducing to possession his share of such gas as is shown by his well.¹

(S. L. 1913, p. 440, Sec. 2.)

§ 48. Purchasers of Output.—Any person, firm or corporation, taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas.

(S. L. 1913, p. 440, Sec. 3.)

§ 49. Penalty for Taking More Than Share of Gas.—Any person, firm or corporation, taking more than his or its proportionate share of such gas, in violation of the provisions of this act, shall be liable to any adjoining well owner for all damages sustained thereby and subject to a penalty for each violation not to exceed five hundred dollars (\$500.00), and each day such violation is continued shall be a separate offense.

(S. L. 1913, p. 441, Sec. 4.)

§ 50. Punishment for Violations of Act.—Any person or agent of a corporation, who takes gas, or aids or abets in the taking of gas, except as herein provided, either directly or indirectly, as an individual, officer, agent, or employee of any corporation, shall be guilty of grand larceny, and, upon conviction thereof, shall be sentenced to the penitentiary not to exceed five (5) years.

(S. L. 1913, p. 441, Sec. 5.)

¹ See Rule 32 of Corporation Commission at page 37.

CORPORATION COMMISSION OF OKLAHOMA.

Cause No. 2935.

IN RE

Order No. 1299.

PROPOSED ORDER NO. 159 FOR THE PROMULGATION OF ADDITIONAL AND SUPPLEMENTAL RULES FOR THE CONSERVATION OF OIL AND NATURAL GAS.
ORDER.

The Corporation Commission having held hearing and investigation pursuant to Proposed Order No. 159 and the Oil and Natural Gas Conservation Laws of the State and in accordance with the provisions thereof, having made its finding of fact, and being fully advised in the premises, it is therefore considered, ordered and adjudged that the following rules, regulations and requirements be and are hereby prescribed:

RULE 1. *Waste Prohibited.* Natural gas and crude oil or petroleum shall not be produced in the State of Oklahoma in such manner and under such conditions as to constitute waste. (Sec. 1, Ch. 197, S. L. 1915; Rule 1, Order No. 937.)

RULE 2. *Waste Defined.* The term "waste" as above used in addition to its ordinary meaning, shall include (a) escape of natural gas in commercial quantities into the open air; (b) the intentional drowning with water of a gas stratum capable of producing gas in commercial quantities; (c) underground waste; (d) the permitting of any natural gas well to wastefully burn; and (e) the wasteful utilization of such gas. (Sec. 2, Ch. 197, S. L. 1915; Rule 2, Order No. 937.)

RULE 3. *Gas to Be Confined—Strata to Be Protected.* Whenever natural gas in commercial quantities or a gas bearing stratum known to contain natural gas in such quantities is encountered in any well drilled for oil or gas in this State, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating waters. (Sec. 3, Ch. 197, S. L. 1915; Rule 3, Order No. 937.)

RULE 4. *Commercial Quantities Defined.* Any gas stratum showing a well defined gas sand and producing gas shall be considered capable of producing gas in commercial quantities and any gas coming from such a stratum or sand shall be considered a commercial quantity, and such stratum or sand shall be protected the same as if it produced gas in excess of two million cubic feet per day of twenty-four hours. (Sec. 3, Ch. 197, S. L. 1915; Rule 4, Order No. 937.)

RULE 5. *Gas to Be Taken Ratably.* Whenever the full production from any common source of supply of natural gas in this State is in excess of the market demands, then any person, firm or corporation having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. (Sec. 4, Ch. 197, S. L. 1915; Rule No. 5, Order No. 937.)

RULE 6. *Common Purchaser Rule.* Every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this State, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines, without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing, but if any such person, firm or corporation shall be unable to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. (Sec. 5, Ch. 197, S. L. 1915; Rule 6, Order No. 937.)

RULE 7. *Common Purchaser—Discrimination Prevented.* No common purchaser shall discriminate between like grades and pressures of natural gas, or in favor of its own production or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of pro-rating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion such production bears to the total production available for marketing. (Sec. 5, Ch. 197, S. L. 1915; Rule 7, Order No. 937.)

RULE 8. *Gas to be Metered.* All gas produced from the deposits of this State when sold shall be measured by meter and the Corporation Commission shall, upon notice and hearing, relieve any common purchaser from purchasing gas of an inferior quality or grade, and the Commission shall from time to time make such regulations for delivery, metering and equitable purchasing and taking as conditions may necessitate. (Sec. 5, Ch. 197, S. L. 1915; Rule 8, Order No. 937.)

RULE 9. *Commission Shall Regulate the Taking of Natural Gas.* The Corporation Commission shall as occasion arises prescribe rules and regulations for the determination of the natural flow of any well or wells in this State, and shall regulate the taking of natural gas from any and all common sources of supply within the State so as to prevent waste, protect the interests of the public and of all those having a right to produce therefrom, and shall prevent unreasonable discrimination in favor of any one common source of supply as against another. (Sec. 4, Ch. 197, S. L. 1915; Rule 9, Order No. 937.)

RULE 10. *Eminent Domain—Acceptance of Law to be Filed With Commission.* Before any person, firm or corporation shall have possess, enjoy or exercise the right of eminent domain, right-of-way, right to locate, maintain, construct or operate pipe lines, fixtures, or equipment belonging thereto or used in connection therewith, for the carrying or transportation of natural gas, whether for hire or otherwise, or shall have the right to engage in the business of purchasing, piping, or transporting natural gas, as a public service corporation, or otherwise, such person, firm or corporation shall file in the office of the Corporation Commission a proper and explicit authorized acceptance of the provisions of the law. (Sec. 9, Ch. 197, S. L. 1915; Rule 10, Order No. 937.)

RULE 11. *Duties of Conservation Officers in Reference to Rule 10.* All conservation agents of the Corporation Commission are directed to inquire into the matter of the performance of and compliance with the foregoing rule (No. 10), and to prevent the transportation of gas by any person, firm or corporation, found not to have complied with said rule. (Sec. 8, Ch. 197, S. L. 1915; Rule 11, Order No. 937.)

RULE 12. *Approved Methods of Preventing Waste to be Used.* All operators, contractors, or drillers, pipe line companies, gas distributing companies or individuals, drilling for or producing crude oil or natural gas, or piping oil or gas for any purpose, shall use every possible precaution in accordance with the most approved methods, to stop and prevent waste of oil and gas, or both, in drilling and producing operations, storage, or in piping or distributing, and shall not wastefully utilize oil or gas, or allow same to leak or escape from natural reservoirs, wells, tanks, containers, or pipes. (See also Rule 28 *infra*.)

RULE 13. *Notice of Intention to Drill, Deepen or Plug.* Notice shall be given to the Corporation Commission of the intention to drill, deepen or plug any well or wells and of the exact location of each and every such well. In case of drilling, notice should be given at least five days prior to the commencement of drilling operations.

Notice of intention to plug must be accompanied by a complete log of the well, on forms prescribed by the Corporation Commission.

Blanks for notification and reports can be obtained on application to the Corporation Commission or its conservation agents.

RULE 14. *Plugging Dry and Abandoned Wells.*

(a) Must Be Plugged Under Supervision of Conservation Agent.

All abandoned or dry wells shall immediately be plugged under the supervision of an oil and gas conservation agent of the Corporation Commission.

(b) Manner of Plugging.

All dry or abandoned wells must be plugged by confining all oil, gas or water in the strata in which they occur by the use of mud-laden fluid, and in addition to mud-laden fluid, cement and plugs may be used.

These wells must first be thoroughly cleaned out to the bottom of the hole, and before the casing is removed from the hole, the hole must be filled from the bottom to the top with mud-laden fluid of maximum density and which shall weigh at least 25 per cent more than an equal volume of water; unless the Commission directs that some other method shall be used.

(c) Notice of Intention of Plug.

Before plugging dry and abandoned wells, notice shall be given to the Corporation Commission or its conservation agent in the field and to all available adjoining lease and property owners, and representatives of such lease and property owners may, in addition to the oil and gas conservation agent of the Commission, be present to witness the plugging of these wells if they so desire, but plugging shall not be delayed because of failure or inability to deliver notices to adjoining lease and property owners.

RULE 15. *Log and Plugging Record to be Filed With Commission.* The owner or operator shall, upon the completion of any well, file with the Corporation Commission a complete record or log of the same, duly signed and sworn to, upon blanks to be furnished by the Commission upon application; and upon plugging any well for any cause whatsoever, a complete record of the plugging thereof shall be made out and duly verified on blanks to be furnished by the Commission. (Rule 25, Order No. 937.)

RULE 16. *Proper Anchorage to be Laid.* Before any well is begun in any field where it is not known that high pressure does not exist,

proper anchorage shall be laid, so that the control casing-head may be used on the inner string of casing at all times, and this type of casing-head shall be kept in constant use, unless it is known from previous experience and operations on wells adjacent to the one being drilled that high pressure does not exist or will not be encountered therein. (Rule 15, Order No. 937.)

RULE 17. *Equipment for Conserving Natural Gas Shall be Provided Before "Drilling In."* In all proven or well defined gas fields, or where it can reasonably be expected that gas in commercial quantities will be encountered, adequate preparation shall be made for the conservation of gas before "drilling in" any well; and the gas sands shall not be penetrated until equipment (including mud pumps, lubricators, etc.), for "mudding in" all gas strata, or sands, shall have been provided.

RULE 18. *Separate Slush Pit to be Provided.* Before commencing to drill a well, a separate slush pit or sump hole shall be constructed by the owner, operator or contractor for the reception of all pumpings from clay or soft shale formations in order to have the same on hand for the making of mud-laden fluid. (Rule 14, Order No. 937.)

NOTE. In order to avoid freezing casing, operators are cautioned not to allow sand or lime to be mixed with clay or soft shale pumpings.

RULE 19. *Wells Not to be Permitted to Produce Oil and Gas From Different Strata.* No well shall be permitted to produce both oil and gas from different strata unless it be in such manner as to prevent waste of any character to either product. Therefore, if a strata should be encountered bearing gas and the owner, operator, or contractor should go deeper in search for other gas or oil bearing sands, the stratum first penetrated and likewise each and every sand in turn, shall be closed separately, and if it is not wanted for immediate use, it shall be securely shut in so as to prevent waste, either open or underground. (Rule 16, Order No. 937.)

RULE 20. *Strata to be Scaled Off.* No well shall be drilled through or below any oil, gas or water stratum without sealing off such stratum or the contents thereof, after passing through the sand, either by the mud-laden fluid process or by casing and packers, regardless of volume or thickness of sand. (Rule 17, Order No. 937.)

RULE 21. *Mud-laden Fluid to be Applied.* No gas sand or stratum upon being penetrated shall be drilled or left open more than three days without the application of mud-laden fluid to prevent the escape of gas while further drilling in or through such sand stratum. (Sec. 3, Ch. 197, S. L. 1915; Rule 18, Order No. 937.)

RULE 22. *Density of Mud Fluid Where Well Containing Water is Drilled Into Oil or Gas Producing Strata.* No operator shall drill a well into an oil or gas producing sand with water from a higher formation in the hole, or with a sufficient head of water introduced into the hole to prevent gas blowing to the surface. The well shall either be allowed to blow until the sand has been drilled in or it shall be drilled in under a head of fluid consisting of not less than 25 per cent mud; but in no case shall gas be allowed to blow for a longer period than three days. Mud fluid used for protecting oil and gas bearing sands in upper formations while oil or gas is being produced from deeper formations shall have a density of not less than 25 per cent mud and should contain not less than 28 per cent mud.

RULE 23. *Mud-laden Fluid to Be Applied in Pulling or Redeeming Casing.* No outside casing from any oil or gas well in an unexhausted oil or gas field shall be pulled without first flooding the well with mud-laden fluid behind the inside string of casing, after unseating the casing, and as casing is withdrawn, well shall be kept full to top with said mud-laden fluid and same shall be left in the hole; and said mud-laden fluid shall be so applied as to effectively seal off all fresh or salt water strata, and all oil or gas strata not being utilized (Rule 23, Order No. 937.)

RULE 24. *Mud-laden Fluid—When to Be Applied to Completed Wells.* When necessary (or in any event when ordered by the Corporation Commission) to seal off any oil, gas or water sand, casing shall be seated in mud-laden fluid; and concerning wells already drilled, the operator shall, upon the order of the Corporation Commission, raise any string or strings of casing and re-set them in mud-laden fluid when it is thought advisable to do so in order to avoid existing underground waste, pollution or infiltration. (Rule 22, Order No. 937.)

RULE 25. *Fresh Water to Be Protected.* Fresh water, whether above or below the surface, shall be protected from pollution, whether in drilling or plugging. (Rule 14, Order No. 937.)

RULE 26. *Gas to Be Separated From Oil.* No gas found in the upper part of a level or sand which can be separated from the oil in the lower part of the same sand or in a lower or different sand shall be allowed or used to flow oil to the surface and all gas, so far as it is possible to do so, shall be separated from the oil and securely protected. (Rule 19, Order No. 937.)

RULE 27. *Separating Device to Be Installed Upon Order of Commission.* Where oil and gas are found in the same stratum and it is impossible to separate the one from the other, the operator shall,

upon being so ordered by the Corporation Commission, install a separating device of approved type, which shall be kept in place and used as long as necessity therefor exists, and after being installed, such device shall not be removed nor the use thereof discontinued without the consent of the Corporation Commission. (Rule 20, Order No. 937.)

RULE 28. *Gas Wells Not to Produce From Different Sands at the Same Time Through the Same String of Casing.* No gas well shall be permitted to produce gas from different levels, sands or strata at the same time through the same string of casing (Sec. 3, Ch. 197, S. L. 1915), and when gas upon being found is not needed for immediate use, the same shall be confined in its original stratum until such time as the same can be produced and utilized without waste, (Sec. 3, Ch. 197, S. L. 1915), and in confining gas to its original place, the mud-laden fluid process shall be used unless the character of the formation involved is sufficiently ascertained and understood to know that the casing and packer method with Bradenhead attachment can be safely applied and competently used, and in the use of casing, packing and Bradenhead method, separate strings of casing shall be run to each sand and the application of the latter method in preference to the former shall not be made without notice to and consent of the Corporation Commission. (Rule 21, Order No. 937.)

RULE 29. *Vacuum Pumps Not to Be Installed Except Upon Application to This Commission.* The future installation of vacuum pumps or other devices for the purpose of putting a vacuum on any gas or oil bearing stratum is prohibited, provided that any operator desiring to install such apparatus may, upon notice to adjacent lease owners or operators, apply to the Commission for permission; and in the matter of vacuum pumps heretofore installed, the use of same is authorized unless specifically discontinued by order of the Commission upon notice and hearing. (Rule 22, Order No. 937.)

RULE 30. *Shooting of Wells.*

(a) Wells Not to Be Shot Into Salt Water.

No wells shall be so shot as to let in salt water or other foreign substance injurious to the oil or gas sand.

(b) Reports to Be Made to the Corporation Commission.

Reports shall be made to the Corporation Commission on all wells shot, showing the condition of the well before and after shooting, including the size of the shot, sand or sands shot, production before and after shooting, per cent of water in well before and after shooting.

(c) Damaged Wells to Be Abandoned.

In case irreparable injury is done to the well, or to the oil or gas sand or sands by shooting, the well shall immediately be abandoned and plugged as provided by Rule No. 14 herein.

RULE 31. Gauge to Be Taken—Reports to Commission. All oil and gas operators shall between the first and tenth of each calendar month take a gauge of the volume and rock pressure of all wells producing natural gas, and shall forthwith report to the Corporation Commission on gauge blanks furnished by the Commission. (Rule 26, Order No. 937.)

RULE 32. Production to Be Restrained to 25 Per Cent of Potential Capacity. When the gas from any well is being used, the flow or production thereof shall be restrained to 25 per cent of the potential capacity of the same; that is to say in any day (24 hours) the well shall not be permitted to flow or produce more than one-fourth of the potential capacity thereof, as shown by the last monthly gauge. (Rule 29, Order No. 937.)

RULE 33. Notification of Fires and Breaks or Leaks in Lines. All drillers, operators, pipe line companies, and individuals operating oil and gas wells or pipe lines shall immediately notify the Commission by telegraph or telephone and by letter of all fires which occur at oil and gas wells or oil tanks owned, operated or controlled by them, or on their property, and shall immediately report all tanks struck by lightning and any other fires which destroy crude oil or natural gas, and shall immediately report in the manner heretofore described any breaks or leaks in tanks or pipe lines from which oil or gas is escaping. In all reports of fires, breaks, or leaks in pipes, or other accidents of this nature, the location of the well, tank, or line break shall be given, showing location by quarter, section, township, and range.

RULE 34. Reports From Pipe Line Companies. The Commission will from time to time require oil and gas pipe line companies to make reports to the Corporation Commission showing wells connected with their lines during any month, names of parties from whom oil and gas are purchased, the amount of production taken therefrom, the amount of oil or gas purchased therefrom; and all oil and gas pipe line companies shall, in addition to the other reports required by the rules of the Corporation Commission, furnish to the Commission duplicates of all reports made to the State Auditor under the oil and gas gross production tax laws. The Commission will, in case of over-production or for any other reason which it deems urgent, require oil or gas pipe line companies to furnish daily reports of

the amount of oil or gas purchased or taken from different wells or parties.

RULE 35. *Prescribing Conditions Under Which Pipe Line Companies May Connect With Oil or Gas Wells.* Pipe line companies shall not connect with oil or gas wells until the owners or operators thereof shall furnish a certificate from the Corporation Commission that the conservation laws of the State have been complied with; provided, this rule shall not prevent the temporary connection with any well or wells in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of said well to secure certificate showing compliance with the conservation laws of the State.

RULE 36. *Conservation Laws and Rules of the Corporation Commission to Be Complied With Before Connecting Wells With Pipe Lines.* Owners or operators of oil or gas wells shall, before connecting with any oil or gas pipe line, secure from the Corporation Commission a certificate showing compliance with the oil and gas conservation laws of the State and conservation orders of the Corporation Commission; provided that this rule shall not prevent temporary connection with pipe lines in order to take care of production until opportunity shall have been given for securing such certificate; provided, further, that the owners or operators of such wells shall in a known or proven field make application for such certificate in anticipation of production.

RULE 37. *Drilling Records to Be Kept at Wells.* All operators, contractors, or drillers shall keep at each well accurate records of the drilling, re-drilling, or deepening of all wells, showing all formations drilled through, casing used, and other information in connection with drilling operation of the property, and any and all of this information shall be furnished to the Commission upon request, or to any conservation agent of the Commission.

RULE 38. *Conservation Agents to Have Access to All Wells and All Well Records.* Conservation agents of the Commission shall have access to all wells and to all well records, and all companies, contractors, or drillers shall permit any conservation agent of the Corporation Commission to come upon any lease or property operated or controlled by them, and to inspect any and all wells and the records of said well or wells, and to have access at all times to any and all wells, and any and all records of said wells.

Provided, that information so obtained by conservation agents shall be considered official information and shall be reported only to the Corporation Commission.

RULE 39. *Notice to Contractors, Drillers, and Others to Observe Rules.* All contractors and drillers carrying on business or doing work in the oil or gas fields of the State, as well as lease-holders, land owners, and operators generally, shall take notice of and are hereby directed to observe and apply the foregoing rules and regulations; and all contractors, drillers, land owners, and operators will be held responsible for infraction of said rules and regulations.

RULE 40. *Conservation Agents to Co-operate With Oil and Gas Inspectors of the Department of the Interior.* All conservation agents appointed by the Corporation Commission shall co-operate with and invite the co-operation of the oil and gas inspectors of the United States Bureau of Mines of the Department of the Interior.

RULE 41. *Conservation Agents to Assist in Enforcement of Rules.* All conservation agents of the Commission shall assist in the enforcement of these rules and shall immediately notify the Commission upon observance of any infraction thereof.

ADDITIONAL RULES WILL BE PRESCRIBED FROM TIME TO TIME.

The Commission will from time to time prescribe additional rules, regulations, and requirements for the conservation of crude oil, or petroleum, and natural gas.

This Order shall be in full force and effect from and after August 20, 1917.

IN WITNESS WHEREOF, we have hereunto set our hands and caused to be affixed the seal of the said Commission, this the 16th day of July, 1917.

Corporation Commission,

J. E. LOVE, Chairman.

W. D. HUMPHREY, Commissioner.

CAMPBELL RUSSELL, Commissioner.

(Attest): J. H. HYDE, Secretary.

AMENDMENTS TO COMMISSIONER'S ORDER

No. 1299.

Adopted January 5, 1922, in Order No. 1986.

(1). Amendment to Rule No. 11 of said Order No. 1299.

"The owners of any oil and gas mining lease in this State upon which drilling operations are or may hereafter be carried on shall post a substantial sign in a conspicuous place upon each well or

derrick, giving the name of the farm, the section, township and range, the name of the lease owner and number of the well."

(2). Amendment to Rule No. 13 of said Order No. 1299:

"The Commission may at any time upon its own motion or upon complaint received from any person interested in the property to be drilled or in adjacent property require from the owner of the lease or the person, firm, corporation or association drilling the well a bond in a sum not to exceed \$2500.00 running to the State of Oklahoma conditioned that said well upon abandonment shall be plugged in accordance with the rules and regulations of the Commission. Said bond to remain in force and effect until the plugging is approved by the Conservation Officer not exceeding two years from date of bond; provided that any person, firm, company or corporation may file with the Commission a blanket bond in a sum not to exceed \$10,000.00 with or without surety as may be required by the Commission and to be approved by the Commission covering all wells drilling or to be drilled by the principal in said bond and said bond shall be considered in full compliance with this order until such times as the penalty of said bond shall be collected for violation of the terms thereof."

BOND FOR PLUGGING OIL OR GAS WELL.

KNOW ALL MEN BY THESE PRESENTS that we,.....
.....of
....., Oklahoma, as principals, and.....
.....and
..... of
....., as suret....., are held hereby and firmly bound unto the
State of Oklahoma in the penal sum of \$.....
.....lawful money of the United States, for the faithful pay-
ment of which we hereby bind ourselves, our heirs, executors, admin-
istrators and assigns.

The condition of this obligation is that whereas the above bounden principals have commenced the drilling of a test well for oil or gas on the following described land: Well No.....Description
.....
..... Section Township
Range County, Oklahoma.....
.....

NOW THEREFORE, if the above bounden principals shall comply with all of the provisions of the laws of the State of Oklahoma and the rules, regulations and requirements of the Corporation Commission of

the State of Oklahoma with reference to properly plugging said well upon abandonment, or upon determination that the same is dry, then this obligation is void; otherwise the same shall be and remain in full force and effect.

IN TESTIMONY WHEREOF, Witness our hands this.....day of
....., 192.....
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Principals.

IN TESTIMONY WHEREOF, Witness our hands this.....day of
....., 192.....
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Suret.....

Dated this.....day of....., 192.....

CHAPTER X.

GAS PIPE LINES.

- § 51. Businesses subject to the act.
- 52. Pipe line right-of-way.
- 53. Pipe line operators common purchasers.
- 54. Pipe line operators to be common carriers.
- 55. Non-compliance with act made unlawful.
- 56. Prerequisites to carrying gas.
- 57. The right to use highways.
- 58. Filing records with Corporation Commission.
- 59. Amount of gas to be taken.
- 60. Meter requirements.
- 61. Penalty for violation of act.
- 62. Receivership authorized.
- 63. Reports of gas companies as evidence.
- 64. Enforcement by Corporation Commission.

§ 51. **Business Subject to the Act.**—Every corporation, joint stock company, limited copartnership, partnership or other person, now, or hereafter exercising or claiming the right to carry or transport natural gas by or through pipe line or lines, for hire, compensation or otherwise, or now or hereafter exercising or claiming the right to engage in the business of producing, piping or transporting natural gas, or any other person or persons, now or hereafter engaging in the business of buying, selling in or transporting natural gas within the limits of this State, shall not have or possess the right to conduct or engage in said business or operations, in whole or in part, as above described, or have or possess the right to locate, maintain, or operate the necessary pipe lines, fixtures and equipment thereto belonging, or use in connection therewith, concerning the said business of carrying or transporting natural gas as aforesaid, on, over, along, across, through, in or under any present or future highway, or part thereof, within the State, or to have or possess the right of eminent domain, or any other right or rights, concerning said business or opera-

tion, in whole or in part, except as authorized by and subject to the provisions of this act, except, further, and only such right or rights as may already exist which are valid, vested, and incapable of revocation by any law of this state or of the United States.¹

(S. L. 1913, p. 166, Sec. 1.) Act Cited: Okla. Natural Gas Co. v. State, 47 Okla. 601, 150 Pac. 475.

§ 52. Pipe Line Right-of-Way.—For the purpose of acquiring necessary right-of-way, every such person is hereby granted the right of condemnation by eminent domain, and in the use of the highways in this State, for the purpose of transporting natural gas by pipe lines, and the location, laying, constructing, maintaining and operations thereof.

(S. L. 1913, p. 167, Sec. 2.)

§ 53. Pipe Line Operators Common Purchasers.—Every corporation, joint stock company, limited copartnership, partnership or other person, now or hereafter claiming or exercising the right to carry or transport natural gas by pipe line or pipe lines, for hire, compensation, or otherwise, within the limits of this State, is allowed by, and upon compliance with the requirements of this act, as owner, lessee, licensee, or by virtue of any other right or claim, which is now engaged or hereafter shall engage in the business of purchasing natural gas shall be a common purchaser thereof, and shall purchase all the natural gas in the vicinity of, or which may be reasonably reached by its pipe lines, or gathering branches, without discrimination in favor of one producer or one person as against another, and shall fully perform all the duties of a common purchaser; but if it shall be unable to perform the same, or be legally excused from purchasing and transporting all the natural gas produced or offered, then it shall purchase and transport natural gas from each person or producer ratably, in proportion to the average production, and such common purchasers are hereby expressly prohibited from discriminating in price or amount

¹ Sections 4290 to 4303, inclusive, Rev. Laws 1910, are in conflict with the general provisions of this chapter, and are seemingly repealed.

for like grades of natural gas or facilities as between producers or persons; and in the event it is likewise a producer, it is hereby prohibited from discrimination in favor of its own production, or production in which it may be interested directly or indirectly in whole or in part, and its own production shall be treated as that of any other person or producer. All persons, firms, associations, and corporations are exempted from the provisions of this act, except from the provisions of section (9) nine thereof, where the nature and extent of their business is such that the public needs no use in the same, and the conduct of the same is not a matter of public consequence, and for this purpose the district courts of this State and the Corporation Commission are hereby vested with jurisdiction to determine such exemptions in any action or proceeding properly before them, and provided by the laws now in force in this State regulating the purchase and transportation of oil.

(S. L. 1913, p. 167, Sec. 3.) Compare with Sec. 28 herein.

§ 54. Pipe Line Operators to Be Common Carriers.—Every corporation, joint stock company, limited copartnership, partnership or other person, now or hereafter engaged in the business of carrying or transporting natural gas for hire, for compensation or otherwise, by pipe line or pipe lines, within this State, and by virtue of and in conformity to, any valid law incapable of revocation by any law of this State or of the United States, or by virtue of and in conformity of the provisions of this act, shall be a common carrier thereof as at common law, and no such common carriers shall allow or be guilty of any unjust or any unlawful discrimination, directly or indirectly, in favor of the carriage, transportation or delivery of any natural gas, offered to it, in its possession or control, or in which it may be interested, directly or indirectly, and, provided further, that any person, firm or corporation owning or operating a gas pipe line within the limits of any incorporated city or town in this State shall be exempted from the provisions of this section only as to its distributing lines located wholly within the corporate limits of said city or town.

(S. L. 1919, p. 174, Sec. 1; amending S. L. 1913, p. 168, Sec. 4.)

§ 55. **Non-compliance with Act Made Unlawful.**—It shall be unlawful for any corporation, joint stock company, limited copartnership, partnership or other person, now or hereafter engaged in the business of carrying or transporting natural gas for hire or compensation or otherwise, within the limits of this act and not becoming a common purchaser as defined by, and accepting the provisions of this act, to own or operate, directly or indirectly any gas well or wells, gas leases, or gas holdings or interests in this state, after six months next after the approval of this act, and each and every of said corporations, joint stock company, limited copartnership, partnership or other persons shall divest themselves of all legal or equitable ownership, interest or control, directly or indirectly, in gas well or wells, gas leases or gas holdings or interest in this State.

(S. L. 1913, p. 169, Sec. 5.)

§ 56. **Prerequisite to Carrying Gas.**—Before any corporation, joint stock company, limited copartnership, partnership or other persons shall have, possess, enjoy or exercise the right of eminent domain, right-of-way, right to locate, maintain or operate pipe lines, fixtures or equipment thereunto belonging, or used in connection therewith, as authorized by the provisions of this act, or shall have, possess, enjoy or exercise any right (the word "right" in this connection being used in its most comprehensive legal sense) conferred by this act, every such corporation, joint stock company, limited copartnership, partnership or other person, shall file in the office of said Corporation Commission proper and explicit authorized acceptance of the provisions of this act and the Constitution of this State, in cases of pipe lines a plat showing in detail the points within this State between which, and the route along which the trunk lines are proposed to be constructed, the intended size and capacity thereof, and the location and capacity of all pumping stations, gate valves, check valves and connections and appliances of all kinds used, or to be used, on said trunk or lines; and upon demand of the Corporation Commission the proper party or parties, as required by said Commission, shall

properly file a plat showing in detail all the lines owned and operated by them respectively, with full and explicit information as to their capacity, size and location, and the capacity of their pumping stations, gate valves, check valves and connections of all kinds, respectively, required or used in the operation thereof.

(S. L. 1913, p. 169, Sec. 6.)

§ 57. **The Right to Use Highways.**—Every domestic pipe line company in this State is hereby given authority to build, construct, lay and maintain gas pipe lines, over, under, across or through all highways, bridges, streets or alleys in this State or any public place under the supervision of the Corporation Commission as to where and how in said highways, bridges, streets, alleys and public places said pipe lines shall be laid. Provided the right to lay gas pipe lines in cities shall be acquired as now provided by law, and subject to the responsibility as otherwise provided by law for any negligent injury thereby caused. All persons, natural or artificial, except foreign corporations, shall have the right of eminent domain, and any right or privilege hereby conferred, when necessary to make effective the purposes of this act and the rights thereby conferred. Foreign corporations organized under the laws of any other State or territory, or the United States, and doing or proposing to do business in this State, and which shall have become a body corporate pursuant to or in accordance with the laws of this state, and which, as hereby provided, shall have registered its acceptance of the terms hereof, shall receive all the benefits by this act provided.

(S. L. 1913, p. 170, Sec. 7.)

§ 58. **Filing Records with Corporation Commission.**—Upon a sworn statement of the necessities which would justify a judicial continuance, the Corporation Commission is authorized to extend the time for the filing of the said plats, not, however, to exceed 60 days.

(S. L. 1913, p. 171, Sec. 8.)

§ 59. Amount of Gas to Be Taken.—Every Corporation, joint stock company, limited co-partnership, partnership or other person, now or hereafter claiming or exercising the right to produce natural gas, or to carry or to transport natural gas through pipe line or pipe lines, for hire, compensation, or otherwise within the limits of this state, is allowed by, and upon compliance with the requirements of this act, as owner, lessee, licensee, or by virtue of any other right or claim, is hereby prohibited from taking more than twenty-five (25) per cent of the daily natural flow of any gas well or wells unless for good cause shown, under the exigencies of the particular case the Corporation Commission shall establish a different per centum under the prescribed rules and regulations therefor.

(S. L. 1913, p. 171, Sec. 9.) Compare with Sec. 27 herein.

§ 60. Meter Requirements.—No corporation, joint stock company, limited co-partnership, partnership or person doing business under the provisions of this act shall purchase, collect, transport, convey or sell any gas from any wells in this State except such gas as is run through properly constructed meters, the daily readings of which shall be carefully and accurately taken every twenty-four hours (24), and of which a true and correct report under oath shall be made every month and which report of all such business transacted during the next preceding month shall be filed not later than the fifteenth (15th) day of each and every month with the Corporation Commission and which report shall at all times be open to the inspection of the public. Such report shall be based upon such daily meter readings; shall show the amount of gas run or purchased from each tract of lands, lease or leasehold estate, the names of the seller or sellers of such gas and of the purchaser or purchasers thereof; and any person or persons making or directing, counseling, advising, aiding or abetting in the making or filing of any false report in the premises shall be deemed guilty of perjury, and on conviction thereof be punished as provided by law; and to the end that such meters shall be properly constructed, maintained, repaired and operated, their installation, use and opera-

tion shall at all times be subject to such rules and regulations as the Corporation Commission may prescribe.

(S. L. 1913, p. 172, Sec. 10.)

§ 61. **Penalty for Violation of Act.**—Any person, co-partnership, or corporation, its agents or employees, violating any of the provisions of this act, or any order of a court of competent jurisdiction of this State, or the Corporation Commission, pursuant to the jurisdiction conferred by this act, shall, upon conviction thereof, be fined a sum of not less than one thousand dollars (\$1,000.00), nor more than five thousand dollars (\$5,000.00), or imprisonment not less than six months, nor more than one year, or by both such fine and imprisonment for each and every violation of this act; but in case the monthly runs or takings or transportation of gas shall average so as to be without discrimination, as herein provided, a transaction or transactions of any particular day or week or portion of a month shall be disregarded; and the court of competent jurisdiction of the county in which the omission or commission, which is in violation of this act, has occurred, shall have jurisdiction of an action under the Penal Code for the punishment thereof; and that said penalties shall not be exclusive of civil liability.

(S. L. 1913, p. 172, Sec. 11.)

§ 62. **Receivership Authorized.**—The Corporation Commission shall, upon being reasonably satisfied that any corporation has violated the provisions of this act, recommend to the Attorney General that a receiver be appointed for such corporation. Upon receipt of the recommendation by the Attorney General, he shall within ten days file a petition on behalf of the State in any court of competent jurisdiction, praying that a receiver be appointed, and such court shall immediately consider the application and appoint a receiver, if in the judgment of the court the provisions of this act have been wilfully violated. The receiver, when appointed, shall immediately take charge of all the business, property and assets of such corpora-

tion in the State and shall retain possession thereof until it shall be determined upon the trial whether or not such corporation has violated the provisions of this act, then, in addition to the other penalties herein provided, all the property of said corporation shall be retained under such receivership until the penalties incurred hereunder are paid, after which the receivership may be discharged upon such terms and conditions as the court may impose as an assurance for the further compliance with this act.

(S. L. 1913, p. 173, Sec. 12.)

§ 63. **Reports of Gas Companies as Evidence.**—A properly certified transcript of the report of any such corporation, association, or person, shall, as against the makers thereof, be *prima facie* evidence of the truth of any matter therein contained.

(S. L. 1913, p. 174, Sec. 13.)

§ 64. **Enforcement by Corporation Commission.**—The Corporation Commission is hereby authorized and empowered to enforce all the provisions of this act, including the employment of requisite help and gas experts to carry out the same, except where jurisdiction is conferred on some other branch of the State government by the Constitution of this State; appeals may be allowed from the decision of the Commission to the Supreme Court as now provided by law for appeals in other cases.

(S. L. 1913, p. 174, Sec. 14.) Compare with Sec. 19 herein.

CHAPTER XI.

DOMESTIC CORPORATIONS MAY PURCHASE GAS FROM FOREIGN CORPORATIONS.

§ 65. Purchasing gas from interstate pipe lines.

66. Foreign and domestic corporations to have separate ownership.

§ 65. **Purchasing Gas from Interstate Pipe Lines.**—All domestic gas pipe line corporations in this State, which are now, or shall hereafter fully comply with the laws of this State, and all municipal corporations, owning or operating a gas plant, or which may hereafter own or operate a gas plant, may contract with and secure from foreign corporations, operating interstate gas pipe lines, the supply of gas for said domestic gas companies. And said interstate gas pipe line companies or foreign corporations may enter into said contract and deliver said gas, upon obtaining a license from the Corporation Commission, which is hereby authorized to grant a license to do and transact that particular business of supplying domestic corporations with natural gas, and the taking out of said license and the conduct of said business with domestic pipe line companies, shall not prejudice the said interstate pipe line companies, or foreign corporations in the transaction and conducting of their interstate business; provided, the Corporation Commission may revoke said license when, in its discretion, the public may be best subserved thereby.

(S. L. 1913, p. 165, Sec. 1.)

§ 66. **Foreign and Domestic Corporations to Have Separate Ownership.**—No person or corporation, interested or doing business as an interstate gas pipe line company, shall be interested in or own or control any of the stock of a domestic corporation, purchasing gas from an interstate pipe line company.

(S. L. 1913, p. 165, Sec. 2.)

CHAPTER XII.

OIL PIPE LINES.

- § 67. Oil companies must comply with this article.
- 68. Right of way.
- 69. Foreign corporations.
- 70. Common purchasers of oil.
- 71. Same—exceptions.
- 72. Oil carriers are common carriers.
- 73. Not to be interested in producing.
- 74. Acceptance of laws and plats to be filed.
- 75. Domestic companies have right of way.
- 76. The right of eminent domain.
- 77. Commisison may extend time.
- 78. Penalty for violations.
- 79. Suspension of penalty, when.
- 80. Certified transcript shall be evidence.
- 81. May extend time for operation of law.

§ 67. **Oil Companies Must Comply with This Article.**—Every corporation, joint stock company, partnership or other person, exercising or claiming the right to carry or transport crude oil or petroleum, or any of the products thereof, by or through pipe lines, for hire or otherwise, or exercising or claiming the right to engage in the business of producing crude oil or petroleum, or of refining it, or manufacturing any of the products thereof, or of storing crude oil or petroleum produced by it, or any other person, or engaging in the business of buying, selling or dealing in crude oil or petroleum, within the limits of this State, shall not have or possess the right to conduct or engage in said business or operation, in whole or in part, as above described, or have or possess the right to locate, maintain or operate the necessary pipe lines, fixtures and equipment thereunto belonging, or used in connection therewith, concerning the said business of carrying or transporting crude oil or petroleum as aforesaid, on, over, along, across, through, in or under any present or future highway, or part thereof, within

this State, or have or possess the right of eminent domain or any other rights, concerning said business or operations, in whole or in part, except as authorized by and subject to the provisions of this article, and except such rights as may already exist which are valid, vested, and incapable of revocation by any law of this State or of the United States. The word "petroleum" as used herein means all crude oil and its manufactured products, not including natural gas.

(Sec. 4304, Rev. Laws 1910.)

§ 68. **Right-of-Way.**—For the purpose of acquiring necessary right-of-way, every such person is hereby granted the right of condemnation by eminent domain, and the use of the highways in this State, for the purpose of transporting petroleum by pipe lines, and the location, laying, construction, maintaining and operation thereof.¹

(Sec. 4305, Rev. Laws 1910.) *Texas Co. v. Henry*, 34 Okla. 342, 126 Pac. 224.

§ 69. **Foreign Corporations.**—Corporations of other states or territories, or of the United States, otherwise admissible to do business in this State may get the benefit of this article upon compliance with the laws and constitution of this State, including the provisions of Section 31, of Article IX, of the Constitution, but until such compliance they shall have no right in, on or under the highways.

(Sec. 4306, Rev. Laws 1910.)

§ 70. **Common Purchasers of Oil.**—Every corporation, joint stock company, partnership or other person, claiming or exercising the right to carry or transport crude oil or petroleum or any of the products thereof, by pipe line for hire or otherwise, within the limits of this State, as allowed by, and upon compliance with the requirements of this article, as owner, lessee, licensee, or by virtue of any other right or claim, which is engaged in the business of purchasing crude oil or petroleum

¹ Oil pipe line companies may exercise the right of eminent domain in like manner as railroad companies. Sec. 3186, Rev. Laws 1910.

therein, shall be deemed a common purchaser thereof, and shall purchase all of the petroleum in the vicinity of, or which may be reasonably reached by its pipe lines, or gathering branches, without discrimination in favor of one producer or one person as against another; and shall fully perform all the duties of a common purchaser; but if it shall be unable to perform the same, or shall be legally excusable from purchasing and transporting all of the petroleum produced, then it shall purchase and transport petroleum from each person and producer ratably, in proportion to the average daily production; and such common purchasers are hereby expressly prohibited from discriminating in price or amount for like grades of oil, or facilities as between producers or persons; and in the event such purchaser is likewise a producer, it is hereby prohibited from discriminating in favor of its own production, or storage, or production or storage in which it may be interested, directly or indirectly in whole or in part, and its own production and storage shall be treated as that of any other person or producer.

(Sec. 4307, Rev. Laws 1910.)

§ 71. **Same—Exceptions.**—All persons, firms, associations, and corporations are exempt from the provisions of this article where the nature and extent of their business are such that the public needs no use in the same and the conduct of the same is not a matter of public consequence; and for this purpose the district courts of the State and the corporation commission are vested with jurisdiction to determine such exemptions in any action or proceeding properly before them, as provided in this article.²

(Sec. 4308, Rev. Laws 1910.)

§ 72. **Oil Carriers Are Common Carriers.**—Every corporation, joint stock company, partnership or person engaged in the business of carrying or transporting crude oil or petroleum or any of the products thereof for hire or otherwise, by pipe line,

² By the provisions of Sec. 2, S. L. 1917, page 385, (Sec. 19 herein) the Corporation Commission is given exclusive jurisdiction over the construction and regulation of oil and gas pipe lines.

within this State, and by virtue of and in conformity to any valid law incapable of revocation by any laws of this State or of the United States, or by virtue of and in conformity to the provisions of this article, shall be deemed a common carrier thereof as at common law; and no such common carrier shall allow or be guilty of any unjust or unlawful discrimination, directly or indirectly, in favor of the carriage, transportation, storage or delivery of any crude, stock or storage oil, or any product thereof, in its possession or control, or in which it may be interested, directly or indirectly.³

(Sec. 4309, Rev. Laws 1910.)

§ 73. Not to Be Interested in Producing.—It shall be unlawful for any corporation, joint stock company, partnership or person engaged in the business of carrying or transporting crude oil or petroleum or any of the products thereof, for hire or otherwise, within the limits of this article, and not becoming a common purchaser as defined by, and accepting the provisions of this article, to own or operate, directly or indirectly, any oil well, oil leases or oil holdings or interests in this State, and each of said corporations, joint stock companies, partnerships or persons shall divest themselves of all legal or equitable ownership, interest or control, directly or indirectly, in oil wells, or leases or oil holdings or interests in this State.

(Sec. 4310, Rev. Laws 1910.)

§ 74. Acceptance of Laws and Plats to Be Filed.—Before any corporation, joint stock company, partnership or person shall have, possess, enjoy or exercise the right of eminent domain, right-of-way, right to locate, maintain or operate pipe lines, fixtures or equipment thereunto belonging, or used in connection therewith, as authorized by the provisions of this article, or shall have, possess, enjoy or exercise any right (the word

³ A pipe line for the transportation of oil for hire between two points within the state is a common carrier, see *Pierce Oil Corp. v. Phoenix Refining Co.*, 79 Okla. 36, 190 Pac. 857.

On the subject of interstate pipe lines as common carriers, see "*The Pipe Line Cases*", 234 U. S. 548, 34 Sup. Ct. 956, 58 L. Ed. 1459.

“right” in this connection being used in its most comprehensive legal sense) conferred by this article, every such corporation, joint stock company, partnership or other person shall file in the office of the Corporation Commission a proper and explicit authorized acceptance of the provisions of this article and the Constitution of this State, and, in cases of pipe lines, a plat showing in detail the points within this State between which, and the route along which, the trunk lines are proposed to be constructed, the intended size and capacity thereof, and the location and capacity of all pumping stations, gate valves, check valves and connections and appliances of all kinds used, or to be used, on said trunk lines; and upon demand of the Corporation Commission, the proper parties, as required by said Commission, shall promptly file a plat showing in detail all the lines owned and operated by them respectively, with full and explicit information as to their capacity, size and location, and the capacity of their pumping stations, gate valves, check valves and connections, of all kinds, required or used in the operation thereof.

(Sec. 4311, Rev. Laws 1910.)

§ 75. Domestic Companies Have Right-of-Way.—Every domestic pipe line company in this State is hereby given authority to build, construct, lay and maintain oil pipe lines over, under, across or through all highways, bridges, streets or alleys in this State, or any public place therein, under the supervision of the inspector of oil and gas wells and pipe lines as to where and how in said highways, bridges, streets, alleys and public places said pipe lines shall be laid, and subject to the control of the local municipalities, as to how the business of distribution in that municipality shall be conducted, and subject to responsibility as provided by law for any negligent injury thereby caused.

(Sec. 4312, Rev. Laws 1910.)

§ 76. The Right of Eminent Domain.—All persons, natural or artificial, except foreign corporations, shall have the right of

eminent domain, and any right or privilege hereby conferred, when necessary to make effective the purposes of this article and the rights thereby conferred. Foreign corporations organized under the laws of any other State, or the United States, and doing or proposing to do business in this State, and which shall have become a body corporate pursuant to or in accordance with the laws of this State, and which, as hereby provided, shall have registered its acceptance of the terms hereof, shall receive all the benefits provided by this article.

(Sec. 4313, Rev. Laws 1910.)

§ 77. Commission May Extend Time.—Upon a sworn statement of the necessities which would justify a judicial continuance, the Corporation Commission is authorized to extend the time for the filing of the said plats, not, however, to exceed sixty days.

(Sec. 4314, Rev. Laws 1910.)

§ 78. Penalty for Violations.—Any person, co-partnership or corporation, its agent or employee, violating any of the provisions of this article, or any order of the competent courts of this State, or the Corporation Commission, pursuant to the jurisdiction conferred by this article, shall, upon conviction thereof, be fined a sum of not less than one thousand dollars, nor more than five thousand dollars, or imprisonment for not less than six months, nor more than one year, or by both such fine and imprisonment for each and every violation of this article; but in case the monthly runs or takings or transportation of oil shall average so as to be without discrimination, as herein provided, the transactions of any particular day, week or portion of a month shall be disregarded; and the competent court of the county in which the omission or commission which is a violation of this article has occurred shall have jurisdiction of an action under the penal code for the punishment thereof; and said penalties shall not be exclusive of civil liability.

(Sec. 4315, Rev. Laws 1910.)

§ 79. **Suspension of Penalty, When.**—Whenever the operation of a valid order of a competent court or the Corporation Commission is duly suspended, according to law, the punitive provisions of this article shall likewise be suspended in their operation as to the transactions adjudicated in said court; and further, any court having jurisdiction of an action brought by the State to punish for a violation under the terms of this article, shall not impose a punishment therefor greater than five hundred dollars against any person or corporation, if it finds from the evidence that the violation was made solely with the object of testing according to law the validity of any of the provisions of this article, or of the order of any competent court or of the Corporation Commission, in any proceeding to carry out the provisions hereof.

(Sec. 4316, Rev. Laws 1910.)

§ 80. **Certified Transcript Shall Be Evidence.**—A properly certified transcript of the report of any such corporation, association or person shall, as against the maker thereof, be *prima facie* evidence of the truth of any matter therein contained.

(Sec. 4317, Rev. Laws 1910.)

§ 81. **May Extend Time for Operation of Law.**—For good cause shown, the Corporation Commission is authorized to extend the time within which this article shall operate as to any particular corporation, association or person, not to exceed nine months after the same becomes effective.

(Sec. 4318, Rev. Laws 1910.)

CHAPTER XIII.

ASSESSMENT OF GAS AND PIPE LINE COMPANIES.

- § 82. Definition of terms.
- 83. Annual sworn list.
- 84. Statement of pipe lines.
- 85. Statement of gas companies.
- 86. Penalty for failure to list.

§ 82. **Definition of Terms.**—As used in this article the term “transportation company” shall include any company, corporation, trustee, receiver or any other person owning, leasing or operating for hire a railroad, street railway, canal, steamboat line, and also any freight car company, or company, trustee or person in any way engaged in such business as a common carrier. The term “transmission company” shall include any company, corporation, trustee, receiver or other person owning, leasing or operating for hire any telegraph or telephone line. The term “public service corporation,” as used in this article, shall include all transportation and transmission companies, all gas, electric, light, heat and power companies and all water-works and water power companies, and all persons authorized to exercise the right of eminent domain or to use or occupy any right-of-way, street, alley, or public highway, along, over or under the same in a manner not permitted to the general public. The term “person,” as used in this article, shall include individuals, partnerships, associations and corporations, in the singular as well as plural number.

(Sec. 7336, Rev. Laws 1910.)

Prairie Oil & Gas Co. v. Cruce, 45 Okla. 774, 147 Pac. 152;
Lusk v. State, 47 Okla. 648, 150 Pac. 151.

§ 83. **Annual Sworn List.**—Every public service corporation organized, existing or doing business in this State shall on or before the last day of February of each year return sworn lists or schedules of its taxable property as hereinafter pro-

vided, or as may be required by the State board of equalization, and such property shall be listed with reference to amount, kind and value on the first day of February of the year in which it is listed; and said property shall be subject to taxation for State, county, municipal, public school and other purposes, to the same extent as the real and personal property of private persons.

(Sec. 7338, Rev. Laws 1910.) In re Indian Territory Illumination Oil Co., 43 Okla. 307, 142 Pac. 997; In re Assignment of Western Union Tel. Co., 35 Okla. 626, 130 Pac. 565; McCarter v. State, 82 Okla. 78, 198 Pac. 303.

§ 84. **Statement of Pipe Lines.**—Each pipe line company doing business in this State shall return to the State auditor sworn statement or schedule as follows:

First. Of the right-of-way and main line, giving the entire length of main line in this and other States, showing the size of pipe and showing the proportion in each city, school district, township and county, and the total in this State.

Second. The total length of each lateral or branch line and the size of the pipe, together with the name of each city, school district, township and county in which such lateral and branch lines are located.

Third. A complete list giving location as to city, township, school district or county of all pumping stations, storage depots, machine shops, or other buildings together with all machinery, tools, tanks and material.

Fourth. A statement or schedule showing the amount of its authorized capital stock and the number of shares into which the same is divided; the amount of capital stock paid up; the market value of such stock, or if it has no market value, then the actual value thereof, and the total amount of outstanding bonded indebtedness.

Fifth. A correct detailed statement of all other personal property, including oil in storage and cash on hand, and giving the location thereof.

(Sec. 7341, Rev. Laws 1910.)

§ 85. **Statement of Gas Companies.**—All gas, light, heat and power companies shall annually return to the State auditor sworn statement showing the size and total length of pipe owned by such company and the location thereof, giving the county, city, township and school district; a statement of franchises held by such company from any municipal corporation in this State, the length of time the same are to run, and the conditions under which they were granted; and a statement of all buildings and other permanent improvements, pumping stations, tools, material and other personal property, including cash on hand and the location thereof.

(Sec. 7343, Rev. Laws 1910.) In re Oklahoma Gas & Electric Co. (Okla.), 171 Pac. 27.

§ 86. **Penalty for Failure to List.**—If any public service corporation doing business in this State shall fail or refuse to make the statements or schedule to the State auditor required by the provisions of this article, it shall be liable to a penalty of five thousand dollars for each offense, to be recovered at the suit of the State in any court of competent jurisdiction.

(Sec. 7347, Rev. Laws 1910.)

CHAPTER XIV.

INSPECTION LAWS.

- § 87. Oils to be inspected.
- 88. Terms defined.
- 89. Compensation and duties of inspectors.
- 90. Inspectors to follow rules of Corporation Commission.
- 91. Penalty for sale of inferior products.
- 92. Inspection, how made.
- 93. Additional rules and regulations.
- 94. Fees for inspection.
- 95. False test, penalty.
- 96. Oil condemned may be used for what purposes.
- 97. Sale of uninspected oils.
- 98. Penalty for hindering inspection.
- 99. Law not to apply, when.
- 100. Failure to erase marks or brands.
- 101. Misconduct of inspector.
- 102. Alteration of inspector's marks, penalty.
- 103. Unlawful sale of oil.
- 104. Civil liability for unlawful sale.
- 105. Adulteration.
- 106. Recovery of fines and penalties.
- 107. Liability of manufacturers and wholesalers.
- 108. Prosecutions.

§ 87. **Oils to Be Inspected.**—Jurisdiction is hereby conferred upon the Corporation Commission to inspect all oils and liquids the product of petroleum or other bituminous substances or into which the product of petroleum enters, by whatever name called, which may be or can be used for illuminating, heating, or power purposes, manufactured in this State or brought into it, before the same are consumed, used, sold or offered to be sold or disposed of to merchants, consumers, or other persons within this State, and the Corporation Commission is hereby authorized to appoint, with the approval of the Governor, oil inspectors, who shall perform the duties now prescribed by Chapter 96, Session Laws, 1915, and to perform such other

duties as may be required by general rules and regulations of the Corporation Commission.¹

(S. L. 1917, p. 286, Sec. 4.) This section amends Sec. 1, Ch. 96, S. L. 1915, which amended Sec. 4332, Rev. Laws 1910.

§ 88. Terms Defined.—The word “manufacture” as used herein shall mean persons or corporations engaged in the distillation of petroleum by the usual process, and the word “person” as used herein shall mean and include all persons, groups of persons, firms and corporations, whether acting as owner, bailee or agent.

(Sec. 4333, Rev. Laws 1910.)

§ 89. Compensation and Duties of Inspectors.—The Chief Oil and Gas Conservation Agent of the Corporation Commission shall be ex-officio gauger of liquids used for illumination, heating or power purposes, and shall be designated as State Oil Inspector. The Corporation Commission shall appoint and assign for duty deputy oil inspectors at any points where there are located tank stations, or refineries, or at any point where in the judgment of said Commission an inspector is needed; provided, that said deputy shall not be an agent or employee of any oil company or refinery or in any manner interested in the sale of oil or any of its refined products; and provided, further, that oils, gasoline or other products of crude oil shall be inspected when practicable in the county where sold. Each deputy inspector may retain eighty-five per cent (85%) of the fees collected by him, until the amount so retained by him shall reach one hundred and fifty dollars (\$150.00), and twenty-five per cent (25%) of the fees collected by him thereafter until the amount so retained by him shall be two hundred dollars (\$200.00) and all balance thereof shall be remitted by him to the State Oil Inspector, with a full statement of the number

¹ Sections 4334, 4336, 4337, 4343, 4344, 4353, 4354, 4355 and 4356, Rev. Laws of 1910, have apparently been changed, modified or amended, either by subsequent acts of the legislature, or by the rules and regulations of the Corporation Commission for the inspection of oils. Therefore, said sections have been omitted so as to avoid confusion.

of gallons of burning oil, or kerosene, and gasoline inspected, the amount of fees collected, the amount retained and the amount remitted therewith; provided, that in no case shall the fees so retained exceed one hundred and fifty dollars (\$150.00) or two hundred dollars (\$200.00) for each inspector for any one month, as hereinbefore specified. Such deputy must be empowered to perform the duties of inspector and shall be liable for such penalties as may be prescribed by law. The Corporation Commission shall have the power to remove any or all of said deputies at will and appoint other inspectors. The various deputies provided for herein shall, at the expense of the State, be provided with proper instruments, stencils, letters and brands necessary for them to use in the performance of their duties. Every person appointed State inspector or deputy shall, before he enters upon the duties of his office, take the constitutional oath of office. It shall be the duty of each and every inspector or deputy inspector to accurately stencil the exact gravity of the burning oil, or kerosene, and gasoline inspected by him in plain legible characters upon the container thereof.

(S. L. 1919, p. 276, Sec. 1.) This section amends Sec. 2, Ch. 96, S. L. 1915, which amended Sec. 4335, Rev. Laws 1910.

§ 90. **Inspectors to Follow Rules of Corporation Commission.**

—The Corporation Commission shall have the power to regulate the test and promulgate rules as they see fit, from time to time. It shall be the duty of the inspectors to follow the rules laid down by the Corporation Commission in the test prescribed by them.

(S. L. 1919, p. 276, Sec. 2.)

§ 91. **Penalty for Sale of Inferior Products.**—Any person who shall sell, offer for sale, or in any way dispose of any petroleum, oil, gasoline or any other product of petroleum without the same first having been duly inspected according to law, or if any such person shall sell, offer for sale, or in any way dispose of any of the above named oils or liquids when the same

shall have been rejected by any legal inspector of oils, such person shall be liable to a fine of not to exceed five hundred dollars (\$500.00) for each offense, which fine may be collected by suit in any court of competent jurisdiction instituted on behalf of the State by the Attorney General or by any County Attorney.

(S. L. 1919, p. 277, Sec. 3; amending Sec. 4340, Rev. Laws, 1910.)

§ 92. **Inspection, How Made.**—Oils or gasoline or any of the products of crude oil shall not be inspected by sample, but the inspection shall be made from the tank car, can or other container from which the product is sold or delivered and shall be made by the inspector at the point where the product is located; provided, that nothing in this section shall prevent the sending of samples to the State Oil Inspector, or to the State Chemist for inspection to determine the correctness of any inspection heretofore or hereafter, made by any oil inspector of the State; provided, further, that if the attendance of an inspector cannot be obtained prior to the accrual of any demurrage upon any tank car in which said oils or gasoline are shipped, then a fair sample may be taken and the car emptied and an inspection of such sample shall be considered an inspection of the contents of said car.

(S. L. 1919, p. 277, Sec. 4.)

§ 93. **Additional Rules and Regulations.**—The Corporation Commission is hereby empowered to prescribe such additional rules, regulations and requirements as may be necessary for the proper inspection of oils, gasoline or any of the products of crude oil mentioned in the laws relating to inspection and shall have the same, or similar powers in reference thereto as provided by Chapters 25 and 197, Session Laws 1915, relating to the conservation of crude oil and natural gas, and the same procedure, method of hearing and trial, right to punish for contempt, and right to appeal to Supreme Court shall apply

hereto, as apply and are provided for in said Chapters 25 and 197, Session Laws 1915.

(S. L. 1919, p. 277, Sec. 5.)

§ 94. Fees for Inspection.—That section 4342 of the Revised Laws of the State of Oklahoma, 1910, is hereby amended to read as follows:

“The inspector and his deputies shall charge and receive for inspecting oils and gasoline in quantities in bulk four cents (4c) per barrel and fifty gallons shall constitute a barrel. If inspected in barrels the inspector shall charge and receive five cents per barrel for inspecting in lots of fifty barrels or more, and ten cents per barrel for inspecting in lots of less than fifty barrels, at one time, which shall be paid by the party owning said oil or having the same in his possession at the time of the inspection. Oils so inspected shall be taken by the inspector or his deputy directly from the original package or container; provided, that in no case shall the retail dealer or consumer be liable to the manufacturers or wholesale dealer for fees paid for inspection of oils while in the possession of a manufacturer or wholesale dealer or one of their agents.”

(S. L. 1915, p. 151, Sec. 3.)

§ 95. False Test, Penalty.—That section 4348 of the Revised Laws of the State of Oklahoma, 1910, is hereby amended to read as follows:

“Any inspector of oil who shall wilfully or negligently make any false grade, test or brand of any oils and liquids or who shall knowingly or negligently fail to make such inspection, test, stencils, or brand, as herein provided for shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred (\$100.00) dollars and shall immediately be removed from office.”

(S. L. 1915, p. 151, Sec. 4).

§ 96. **Oil Condemned May Be Used for What Purposes.**—Use may be made of any of said oils, even though tested and found to flash at a temperature of less than one hundred and fifteen degrees, as hereinbefore provided, for consumption in gas plants, either portable or stationary, when said gas is conveyed through pipes and burned through gas burners like ordinary coal gas, and may also be used in the production of steam, in smelting or refining metals, or in forges or furnaces, or other mechanical use than heating or illuminating residences, business houses or other structures, and shall not otherwise be sold or used.

(Sec. 4338, Rev. Laws 1910.)

§ 97. **Sale of Uninspected Oils.**—If any person in this State shall use, sell or dispose of to merchants, consumers or any other person or persons within this State, any of the oils or fluids specified in the first section of this article, without the same having been first inspected by an authorized inspector of this State, and the barrels, casks or packages containing the same branded by him as herein provided, said person so offending shall be punished by a fine not exceeding one hundred dollars for each barrel, cask or package of oils or fluids aforesaid so used by, sold or offered for sale to merchants, consumers or any other person or persons within this State.

(Sec. 4339, Rev. Laws 1910.) *Richardson-Gay Oil Co. v. Ashton*, 17 Okla. 401, 87 Pac. 662.

§ 98. **Penalty for Hindering Inspection.**—Any dealer in or manufacturer or other person in possession of oils or fluids specified in the first section of this article who shall refuse to admit an inspector or his deputy upon his premises, so far as it may be necessary for the performance of his duties, or shall obstruct an inspector or his deputy in the performance of his duties, shall, for each refusal to admit on his premises or obstruction offered to inspection, be fined for each offense not to exceed one hundred dollars.

(Sec. 4341, Rev. Laws 1910.)

§ 99. **Law Not to Apply, When.**—The provisions of this law shall not apply to oils or fluids brought into this State in transit for shipment to and consumption in other states or territories.
(Sec. 4345, Rev. Laws 1910.)

§ 100. **Failure to Erase Marks or Brands.**—If any person shall refill, buy or receive, or shall sell or deliver any empty coal oil barrel or other receptacle used for handling such oils, without first erasing all marks or brands now required by law to be marked or branded on a barrel by an inspector, he shall be guilty of a misdemeanor; and for each barrel or other receptacle so filled with oil, sold and delivered, or bought and received, shall be fined not to exceed five hundred dollars.
(Sec. 4346, Rev. Laws 1910.)

§ 101. **Misconduct of Inspector.**—If any inspector shall deal in or purchase otherwise than for his own use, any article of which he is appointed inspector, or be directly or indirectly interested in the purchase of any such article when condemned, he shall be fined not exceeding ten dollars for every barrel, cask or package so bought or dealt in by him, and if any inspector shall receive or accept any fee or other compensation for inspecting oils without an actual inspection of said oils, he shall be fined not to exceed one hundred dollars for each offense and shall be removed from office.
(Sec. 4347, Rev. Laws 1910.)

§ 102. **Alteration of Inspector's Marks, Penalty.**—If any person shall wilfully use or imitate the brand or mark of an inspector on any cask, barrel, reservoir or other vessel, or shall put any oils as provided by the first section of this article into any cask, barrel, reservoir or other vessel which has been previously branded by an inspector, without canceling the original brand or mark, or shall alter, erase or obliterate any brand or mark made by any inspector on any inspected cask, barrel, reservoir or other vessel which contains any oil which has been inspected, or shall mark or brand with the mark or brand of

any inspector, or with any imitation thereof, any oils subject to inspection under this article, which have not been inspected, and shall sell or offer to sell or otherwise dispose of the same, he shall, for every such offense, be fined in any sum not to exceed five hundred dollars.

(Sec. 4349, Rev. Laws 1910.)

§ 103. **Unlawful Sale of Oil.**—No person who shall bring into this State any petroleum oil or product thereof, as provided by the first section of this article, shall empty the same out of the original packages in which it is brought into this State until the same has been inspected. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding five hundred dollars, and any such person who shall bring into this State any petroleum oil or any product thereof, as provided by the first section of this article, who shall sell or otherwise dispose of the same after the same have been inspected and found to be below test as provided herein, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars.

(Sec. 4350, Rev. Laws 1910.)

§ 104. **Civil Liability for Unlawful Sale.**—If any person shall sell, offer for sale, or in any way dispose of any petroleum oil or product thereof, as described by the first section of this article, without the same having been first duly inspected according to law, or if any such person shall sell, offer for sale, or in any way dispose of any of the above-named oils or liquids when the same shall have been rejected by any legal inspector of oils, such person shall be liable for any damages or any injury which may have been caused either directly or indirectly by the ignition or combustion of said oils, and when an injury has been caused by said oils, sold or disposed of as above specified, the burden of proof shall be placed upon the person sell-

ing or disposing of the same as above specified to show that the injury was not caused by the poor quality of said oils.

(Sec. 4351, Rev. Laws 1910.)

§ 105. **Adulteration.**—No person shall adulterate with paraffin or other substance, for the purpose of sale or for use, any of the illuminating oils specified in this article, in such manner as to render them dangerous for use, nor shall any person sell or offer to sell or knowingly use for illuminating purposes any such adulterated oil. Any person or persons violating the provisions of this section shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be punished by a fine of not less than one hundred dollars nor more than three hundred dollars.

(Sec. 4352, Rev. Laws 1910.)

§ 106. **Recovery of Fines and Penalties.**—When any fine, penalty or costs are assessed under the provisions of this article, the party against whom such fines, penalties or costs are assessed, if the same shall not be paid, shall stand committed until such fines, penalties and costs are paid; provided, however, that all fines, penalties or costs provided for by any section of this article, may, at the option of the prosecutor, be recovered by a civil action in the name of the State, in any court having jurisdiction of the amount, and the rules of evidence applicable to civil cases shall be applied thereto, and the jury (or the court, in case of trial without a jury) shall fix the amount of recovery within the limits of the fines fixed for each offense, respectively, with costs.

(Sec. 4357, Rev. Laws 1910.)

§ 107. **Liability of Manufacturers and Wholesalers.**—All manufacturers and wholesale dealers shall be liable to retail dealers and all other persons for damages of every kind and nature, including fines, penalties and civil damages paid by such retail dealers and other persons because of the inferior quality of oil sold by said manufacturers or wholesale dealers

to said retail dealers and other persons, and all contracts for the sale or purchase price of oils sold in violation of the provisions of this article shall be void.

(Sec. 4358, Rev. Laws 1910.)

§ 108. **Prosecutions.**—It shall be the duty of the county attorney or the attorney general to prosecute violations of this article and in addition to the penalties herein provided for there shall be taxed as a part of the costs of said case and collected in the same manner as costs in said case an attorney's fee of fifteen dollars in county and justice courts and thirty dollars in district and superior courts, which said sum shall be paid to the county attorney or attorney general in addition to the salaries otherwise provided for; provided, that in no case shall the State or any county be liable for such attorney's fee.

(Sec. 4359, Rev. Laws 1910.)

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA.

IN RE Proposed Order No. 166 of the Corporation Commission of the State of Oklahoma for the promulgation of general rules and regulations for the inspection of all oils and liquids, the products of petroleum or other bituminous substances, or into which the product of petroleum enters, by whatever name called, which may or can be used for illuminating, heating or power purposes, manufactured in this State or brought into it for the purpose of being sold or disposed of to merchants, consumers or other persons within the State, as provided by Section 4, Chapter 207, Session Laws, 1917, and Chapter 197, Session Laws, 1919, and all other laws or acts pertaining thereto.

Cause No. 3722
Order No. 1575

ORDER.

In pursuance to Proposed Order No. 166, regularly published as provided by law, hearing was held before the Corporation Commission, June 9, 1919, to consider the promulgation of rules, regulations and requirements governing the inspection of oils and liquids, the products

of petroleum, or other bituminous substances, or into which the products of petroleum enters, by whatever name called, which may be used for illuminating, heating or other power purposes, manufactured in this State, or brought into it for the purpose of being sold or disposed of to merchants, consumers, or other persons within this State, as provided by Section 4, Ch. 207, Sessions Laws, 1917, and Chapter 197, Session Laws, 1919, and all other laws pertaining thereto.

Section 4, H. B. 136, Session Laws, 1917, effective February 16, 1917, amending Section 4332, R. L. 1910, confers jurisdiction upon the Corporation Commission to inspect liquid products. This Section reads as follows:

"Jurisdiction to Inspect Liquid Products Conferred on Corporation Commission. Jurisdiction is hereby conferred upon the Corporation Commission to inspect all oils and liquids, the product of petroleum or other bituminous substances or into which the product of petroleum enters by whatever name called, which may or can be used for illuminating, heating or power purposes manufactured in this State or brought into it, before the same are consumed, used, sold or offered to be sold or disposed of to merchants, consumers, or other persons within this State, and the Corporation Commission is hereby authorized to appoint oil inspectors who shall perform the duties now prescribed by Chapter 96, Session Laws, 1915, (following sections herein) and to perform such other duties as may be required by general rules and regulations of the Corporation Commission."

Section 1, Chapter 197, Session Laws, 1919, provides:

"The Chief Oil and Gas Conservation Agent of the Corporation Commission shall be ex-officio gauger of liquids used for illumination, heating or power purposes, and shall be designated as State Oil Inspector. The Corporation Commission shall appoint and assign for duty deputy oil inspectors at any points where there are located tank stations, or refineries, or at any point where in the judgment of said Commission an inspector is needed; Provided, that said deputy shall not be an agent or employee of any oil company or refinery or in any manner interested in the sale of oil or any of its refined products; and provided, further, that oils, gasoline or other products of crude oil shall be inspected when practicable in the county where sold. Each deputy inspector may retain eighty-five per cent (85%) of the fees collected by him until the amount so retained by him shall reach One Hundred and Fifty Dollars (\$150.00) and twenty-five per cent (25%) of the fees collected by him thereafter until the amount so retained by him shall be Two Hundred Dollars (\$200.00) and all balance thereof shall be

remitted by him to the State Oil Inspector, with a full statement of the number of gallons of burning oil, or kerosene and gasoline inspected, the amount of fees collected, the amount retained and the amount remitted therewith; provided, that in no case shall the fees so retained exceed One Hundred and Fifty Dollars (\$150.00) or Two Hundred Dollars (\$200.00) for each inspector for any one month, as hereinbefore specified. Such deputy must be empowered to perform the duties of inspector and shall be liable for such penalties as may be prescribed by law. The Corporation Commission shall have the power to remove any or all of said deputies at will and appoint other inspectors. The various deputies provided for herein shall, at the expense of the state, be provided with proper instruments, stencils, letters and brands necessary for them to use in the performance of their duties. Every person appointed State Inspector or deputy shall, before he enters upon the duties of his office, take the Constitutional oath of office. It shall be the duty of each and every inspector or deputy inspector to accurately stencil the exact gravity of the burning oil, or kerosene, and gasoline inspected by him in plain legible characters upon the container thereof."

Section 2, Chapter 197, Session Laws, 1919, provides in part as follows:

"The Corporation Commission shall have the power to regulate the test and promulgate rules as they see fit, from time to time."

Pursuant to the above hearing and by virtue of the above laws, the Corporation Commission promulgates the following rules and regulations:

1. Inspectors shall reside within the district for which appointed.
2. Inspectors shall make no inspection outside of the boundaries of their respective districts, except by direction of the Corporation Commission.
3. Inspectors shall devote to the duties of the office of oil inspector all time necessary to the proper and thorough performance of their duties prescribed by the law and these rules.
4. Each inspector shall keep vigilant watch on all selling stations, either wholesale or retail, within the inspection district. Where brands or labels are not displayed as prescribed herein, all oils not so labelled shall be inspected and fees charged for the same on the assumption that they have not been previously inspected.
5. Inspectors shall have authority to make inspections where oils are labelled as provided herein as well as where labels are not posted,

but, where such inspection of oils represented as of a particular grade shows such representation to be correct, no fee for such reinspection shall be collected. If such reinspection proves oils to have been improperly labelled and to be in fact "inferior" in grade as labelled, fee for such inspection shall be collected and the inspector shall notify the Corporation Commission of such violation of the law.

6. Any deputy inspector, when in doubt as to the correctness of any label showing the result of the distillation test as hereinafter provided by these rules, shall procure sample of oils so labelled and send same to the State Oil Inspector. The State Oil Inspector, upon receipt of sample shall further inspect and analyze, or cause to be inspected and analyzed, said sample and, if said analysis shows a variance from analysis shown by said label, such matter shall be immediately reported by the State Oil Inspector to the Corporation Commission.

7. Inspectors shall require dealers to show records of sales at any time and where record of total sales does not agree with record of total oils inspected, the fact shall be reported to the Corporation Commission for further investigation and action.

8. Inspectors shall make careful study of all provisions of the law relating to inspection of oils and shall make strict enforcement of all requirements therein applying to dealers or to the public, and shall make strict observance of all requirements therein applying to inspectors.

9. "No inspector shall deal in or purchase, otherwise than for his own use, any article of which he is appointed inspector, or be directly or indirectly interested in the purchase of any such article when condemned. In event any inspector shall violate the provisions of this Rule he shall be fined not to exceed Ten Dollars (\$10.00) for every barrel, cask or package so bought or dealt in by him; and, if any inspector shall receive or accept any fee or other compensation for inspecting oils without an actual inspection of said oils, he shall be fined not to exceed One Hundred Dollars (\$100.00) and shall be removed from office."

10. The word "manufacturer" as used in this Order shall mean persons or corporations engaged in the distillation of crude petroleum or by compressor, absorption or cracking process, and the word "person" as used herein shall mean and include all persons, groups of persons, firms and corporations, whether acting as owner, bailee or agent.

11. Any dealer, agent or vendor of any of the oils or fluids mentioned in these rules shall not be permitted to draw off the same or

permit to be drawn from a car, tank or other vessel into their receiving reservoirs or other receptacle, or offer the same for sale from any barrel, cask or package before the same has been first inspected by the State Inspector or his deputy inspector and an official certificate or car tank seal showing that same has been inspected, issued to the wholesale dealer or agent authorizing the same to be drawn from the said tank car, which certificate shall designate the number of the car tank; provided, however, that, if the contents of any car of petroleum products shall not have been inspected within 18 hours after notification of receipt and request for inspection as hereinbefore provided, the same may be drawn off and stored in a reservoir, warehouse or tank and held for inspection.

12. All oils subject to inspection shall be inspected before sold or offered for sale to consumers. This means that, if not inspected in car in which it is received at destination within the inspection district, such oils shall be inspected in the possession of the dealer, either wholesale or retail, in whose possession the same may be when discovered, and all inspection fees shall be collected at the completion of said inspection.

13. It shall be the duty of each and every inspector, or deputy inspector to accurately mark the exact gravity of all oils inspected by him in plain, legible characters upon the container thereof.

14. No oil or liquids shall be sold or offered for sale by any person, persons, firm or corporation as high grade or aero gasoline, gasoline, motor fuel oil or kerosene which do not meet with the rules and regulations prescribed in this Order.

15. All oils or liquids whose analysis show them to come within the specification required of oils or liquids designated by this Order as high grade or aero gasoline, gasoline, or motor fuel oil shall, before being sold or offered for sale by any person, persons, firm or corporation, be labelled. Such label shall show the grade of oils or liquids offered for sale as provided in specifications governing brands and specifications and shall be displayed where the same shall be in sight and shall be of sufficient size to be read by purchasers of said oil without inconvenience.

16. No person shall adulterate with any other substance, after it has been inspected, for the purpose of sale or for use, any oils or liquids specified in these rules.

17. No person, firm or corporation shall refill, buy or sell or receive or deliver any empty barrel, or barrels or other receptacle or other con-

tainer used for handling oils or liquids without first erasing all marks or brands required by these rules to be marked or branded on said barrel, barrels, receptacles or containers.

18. To effectively carry out the provisions of this Act, it shall be lawful for any state inspector or his deputies at all reasonable times to enter into or upon the premises of any manufacturer, vendor or dealer in any of said oil fluids hereinbefore mentioned, or in any other place where such oils or fluids may be found, kept, stored or manufactured.

19. The provisions of this law shall not apply to oils and fluids brought into this state in transit for shipment to and consumption in other states and territories.

20. All oils or liquids herein designated as high grade aero gasoline, gasoline, or motor fuel oil, before being sold or offered for sale in the State of Oklahoma, shall be tested by applying both the distillation and gravity tests and the result of said tests shall show on the container out of which said liquids are sold or delivered or offered for sale or delivery.

21. All liquids sold as gasoline, the color of which is water white, free from acid and with not more than a trace of sulphur, and of which not more than 5 per cent shall distill below 122 degrees Fahrenheit, and of which at least 97 per cent shall distill below 350 degrees Fahrenheit, shall, in addition to showing its actual analysis as the result of both tests, be labelled "high grade" or "aero" gasoline.

22. (The ruling as to what shall constitute gasoline of the various grades mentioned herein has as yet not been decided upon by the Corporation Commission. When such has been determined due notice will be given.)

23. All oils not meeting the requirements and specifications prescribed for oils to be labelled "high grade" or "aero" gasoline or "gasoline" shall, in addition to showing its actual analysis as the result of both tests, be labelled "motor fuel oil."

24. The "gravity test" to be made on behalf of the state shall be made by the State Oil Inspector or his deputies in the field.

25. The "distillation test," required to be made on behalf of the State, shall, upon request of the Corporation Commission, be made by the State Chemist or such other chemist as the Corporation Commission may designate.

26. The "distillation test" required by these rules shall also be made by the refiners and manufacturers of such oils or liquids to be sold or offered for sale in the State of Oklahoma and the result of said test attached to the bill of lading for each shipment.

27. All refiners or manufacturers of oils or liquids shall file with the Corporation Commission on or before the 5th of each month a report or statement showing all shipments made of oils or liquids sold or offered for sale in the State of Oklahoma during the previous month, which statement shall set forth in detail.

- (a) The date on which each shipment was made.
- (b) The destination of shipment.
- (c) The name of consignee.
- (d) The number of tank cars, drums or barrels and amount of oils or liquids contained in each.

Blank forms for making these reports will be furnished by the Corporation Commission.

28. Apparatus used in making the distillation tests shall be the same as used by the Bureau of Mines for distillation tests for gasoline and the test made and readings taken as hereinbefore specified for each grade.

29. Requirements for kerosene or coal oil shall be as follows:

All kerosene or coal oil, the color of which is water white, free from acid and sulphur, with a specific gravity between 40 and 48 degrees Beaume, both inclusive, and which has a flash point at not less than 120 degrees Fahrenheit, shall be known as "first grade."

All kerosene or coal oil which is free from water, with a specific gravity between 40 and 48 degrees Beaume, both inclusive, and which has a flash point at not less than 110 degrees Fahrenheit, shall be known as "second grade."

30. The tests required shall be made with an apparatus adopted by The American Society for Testing Materials.

WHEREFORE, premises considered and the Commission being advised, it is, therefore, ordered that the above rules and regulations be, and the same are hereby declared to be, effective on and after the date hereof,

the Commission reserving the right to revise and amend the same at its discretion.

Done in the regular order of business at Oklahoma City, Oklahoma, this the 18th day of July, 1919.

CORPORATION COMMISSION OF OKLAHOMA,

(Signed) ART L. WALKER,
Chairman.

(Signed) R. E. ECHOLS,
Commissioner.

(Signed) CAMPBELL RUSSELL,
Commissioner.

ATTEST:

P. E. GLENN,
Secretary.

CHAPTER XV.

METER REGULATIONS.

§ 109. Gas companies to use meters.

110. Punishment for violations of act.

111. Minimum charge prohibited.

112. Penalty.

§ 109. **Gas Companies to Use Meters.**—That all persons, firms, corporations or other business organizations engaged in the business of furnishing natural gas in municipalities in this state, to the inhabitants thereof, shall do so through standard meters at meter rates; provided, that this Act shall only apply to towns where the population exceeds five hundred, and shall not prohibit the sale of gas at a flat rate to federal, state or municipally owned buildings, institutions or plants; provided further, that this Act shall not abrogate any existing contract, or effect or change the terms or conditions of any franchise granted by any municipal corporation prior to, and in effect April 28th, 1913.

(S. L. 1915, p. 333, Sec. 1; amending S. L. 1913, p. 309, Sec. 1.) *Pawhuska Oil & Gas Co. v. City of Pawhuska*, 64 Okla. 214, 166 Pac. 1058, 148 Pac. 118.

§ 110. **Punishment for Violations of Act.**—Any person, firm, corporation or other business organization who shall violate any of the provisions of this Act shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than five dollars nor more than twenty-five dollars, and each day of such violation shall be deemed a separate offense.

(S. L. 1913, p. 309, Sec. 2.)

§ 111. **Minimum Charge Prohibited.**—That all persons, firms, corporations or other business organizations engaged in the business of furnishing gas in this State to the inhabitants thereof shall be prohibited from making and maintaining a

fixed minimum charge for gas, or for the use of gas meter, or for the inspection of any gas meter used on the premises of any consumer; and providing that the consumer shall be charged only for the number of cubic feet of gas used or consumed as registered by gas meter.

(S. L. 1917, p. 194, Sec. 1.)

§ 112. **Penalty.**—Any person, firm, corporation or other business organization, who shall violate any of the provisions of this Act, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than twenty-five (\$25.00) dollars, nor more than one hundred (\$100.00) dollars, for each and every separate offense.

(S. L. 1917, p. 195, Sec. 2.)

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA.

<i>In Re</i> Proposed Order No. 174, requiring the measurement of all gas transmitted, distributed and consumed within the State of Oklahoma.	}	CAUSE No. 4394 ORDER No. 1960
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FINDINGS OF FACT, OPINION AND ORDER.

On September 14th, 1921, the Commission issued its Proposed Order No. 174, covering the measurement of all gas transmitted, distributed and consumed within the State of Oklahoma.

After due notice, as required by law, a hearing was held at the Commission's Court Room, Capitol Building, Oklahoma City, on October 18th, 1921, in the above Cause. After an explanation of the requirements of the Proposed Order, the utilities represented at the hearing offered no objections.

The Commission, in furthering its campaign on gas conservation, finds that a large quantity of the gas transmitted, distributed and consumed within the State is not measured. Obviously, it is impossible for the Commission to determine with any degree of accuracy the extent of unnecessary waste in communities where these conditions exist.

The Commission is of the opinion that the time is now at hand when all gas transmitted, distributed and consumed within the State should be accurately measured at the various stages of its journey from the well to the ultimate consumer. These stages include the

measurement of the gas, first, before it enters the transmission line; second, as it leaves the transmission line and enters the distribution system; and, third, as it leaves the distribution system to the ultimate consumer. Also all gas used for light, heat and power in connection with its transmission and distribution should be accurately measured. This procedure is necessary in order that the Commission may determine whether or not the loss and unaccounted for gas in the various pipe lines and distributing systems is reasonable or excessive, and, if excessive, what steps are being taken to reduce the loss to a reasonable amount.

It is therefore the Order of the Commission, premises considered, that on and after January 1, 1922, all gas transmitted, distributed and consumed within the State of Oklahoma shall be accurately measured and recorded at the various stages of its journey from the well to the ultimate consumer, as follows:

First: That all gas transmitted by pipe line within the State of Oklahoma shall be accurately measured by approved apparatus before it enters the pipe line and upon its exit from the pipe line, and all gas consumed for light, heat and power in connection with its transmission, shall be accurately measured in order that the loss in transmission may be accurately determined.

Second: That all gas distributed within the State of Oklahoma shall be accurately measured by approved apparatus upon its entrance into the distribution system and upon its exit to the ultimate consumer at the utilities' service meter, and all gas consumed for light, heat and power in connection with its distribution shall be accurately measured in order that the loss in distribution may be accurately determined.

Third: That all measurements required by this Order shall be recorded and the totals only reported monthly to the Commission on its Forms G and GPL, "Monthly Report of Revenues and Expenses." These measurements shall be reported on an 8 oz. pressure base, regardless of the base on which the gas is purchased and sold, except that sales to consumers shall be reported as billed when the pressure at which the gas is delivered is not greater than 8 oz.

In any case where compliance with any of the requirements of this Order introduces unusual difficulties such requirement may be temporarily waived by the Commission upon application of the utility. If, in such case, compliance with the requirement would cost more

than the results of such compliance are worth to the public and gas consumers, it may be permanently set aside by the Commission.

Done at Oklahoma City, Oklahoma, this the 5th day of November, 1921.

CORPORATION COMMISSION OF OKLAHOMA,

(Signed) CAMPBELL RUSSELL,
Chairman.

(Seal) (Signed) ART L. WALKER,
Commissioner.

(Signed) E. R. HUGHES,
Commissioner.

ATTEST:

(Signed) G. F. SMITH,
Secretary.

CHAPTER XVI.

GROSS PRODUCTION TAX.

- § 113. Tax on gross production of oil or gas.
- 114. Proceedings and penalty on delinquency.
- 115. Rebates payable, when.
- 116. Levy and sale for delinquent taxes.
- 117. Purchasers must file reports.
- 118. Reports of shippers.
- 119. Distribution and use of taxes.
- 120. Validity of provision.
- 121. Act not retroactive.
- 122. Effect of invalid parts of act.
- 123. False report deemed perjury.

§ 113. **Tax on Gross Production of Oil or Gas.**—That Section 1 of subdivision A, Article 2, Chapter 107, Session Laws of Oklahoma, 1915, be and the same is hereby amended to read as follows:

“Section 1. That Section 7464, Revised Laws of Oklahoma, 1910, be amended to read as follows:

Section 7464. Every person, firm, association or corporation engaged in the mining or production within this State of asphalt or of ores bearing lead, zinc, jack, gold, silver or copper, or of petroleum or other crude oil or other mineral oil or of natural gas, shall within thirty days after the expiration of the quarter-annual period ending on the last day of March, A. D. 1916, and of each quarter-annual period thereafter expiring respectively, on the last day of June, September, December and March of each year, file with the State Auditor, a statement under oath, on forms prescribed by him showing the location of each mine or oil or gas well operated by such person, firm, corporation or association during the last preceding quarter-annual period; the kind of such mineral, oil or gas produced; the gross amount thereof produced, and the actual cash

value thereof at the place of production; the amount of the royalty payable thereon, if any, to whom payable and whether it is claimed that such royalty is exempt from taxation by law, and the facts on which such claim of exemption, if any, is based; and such other information pertaining thereto as the State Auditor may require, and shall at the same time pay to the State Auditor a tax equal to one-half of one per centum of the gross value of asphalt and of ores bearing lead, zinc, jack, gold, silver and copper produced, less the royalty interest, and equal to three per centum of the gross value of the production of petroleum or other crude or mineral oil and of natural gas, less the royalty interest. The owner of any royalty interest shall pay to the State Auditor the tax herein imposed upon such royalty interest within the time and in the manner provided by this Act.

The tax hereby declared shall also attach to and is levied on what is known as the royalty interest except such royalty interest of the State of Oklahoma or such royalty interests as are exempted from taxation under the laws of the United States and the amount of the tax on the royalty interest shall be a lien on such interest.

The State Auditor shall have power to require any such person, firm, corporation or association engaged in mining or the production of such asphalt, mineral ores aforesaid, petroleum or other crude oil or other mineral oil and natural gas or owner of any royalty interest therein to furnish any additional information by him deemed to be necessary for the purpose of correctly computing the amount of said tax and to examine the books, records and files of such person, firm, corporation or association, and shall have power to examine witnesses, and if any witness shall fail or refuse to appear and testify at the summons or requests of the State Auditor, said State Auditor shall certify the facts and the name of the witness so failing and refusing to appear and testify or to produce any book, record or file to the district court of this State having jurisdic-

tion of the party, and said court shall thereupon issue a summons to said party to appear and give such evidence and produce such books, records and files as may be required and upon failing to do so, the offending party shall be punished as provided by law in cases of contempt.

The State Auditor shall have power to ascertain and determine whether or not any return herein required is a true and correct return of the gross products and of the value thereof of such person, firm, corporation or association engaged in the mining or production of asphalt and ores bearing minerals aforesaid and of petroleum or other crude oil or mineral oil and of natural gas, and if any person, firm, corporation or association has made an untrue or incorrect return of the gross production or value thereof, as hereinbefore required, or has failed or refused to make such return, the said State Auditor shall ascertain the correct amount of either, and compute said tax.

The payment of the taxes herein imposed shall be in full and in lieu of all taxes by the State, counties, cities, towns, townships, school districts and other municipalities upon any property rights attached to or inherent in the right to said minerals, upon leases for the mining of asphalt and ores bearing lead, zinc, jack, gold, silver or copper or for petroleum or other crude oil or other mineral oil or for natural gas upon the mining rights and privileges for the minerals aforesaid belonging or appertaining to land, upon the machinery, appliances and equipment used in and around any well producing petroleum or other crude or mineral oil or natural gas, or any mine producing asphalt, or any of the mineral ores aforesaid and actually used in the operation of such well or mine; and also upon the oil, gas, asphalt or ores bearing minerals hereinbefore mentioned during the tax year in which the same is produced, and upon any investment in any of the leases, rights, privileges, minerals or property hereinbefore in this paragraph mentioned or described; but any interest in the land other than

that herein enumerated, and oil in storage, asphalt, and ores bearing the minerals hereinbefore named, mined, produced and on hand at the date as of which property is assessed for general and ad valorem taxation for any subsequent tax year shall be assessed and taxed as other property within the taxing district in which such property is situated at the time.

The State Board of Equalization, upon its own initiative, may, and upon complaint of any person who claims that he is taxed too great a rate hereunder, shall take testimony to determine whether the taxes herein imposed are greater, or less than the general ad valorem tax for all purposes would be on the property of such producer subject to taxation in the district or districts where the same is situated, including the value of oil, gas, or mineral lease, or of the mining or mineral rights, the machinery, equipment or appliances used in the actual operation of, in and around any such well or mine, the value of the oil, gas, asphalt or any of the said mineral ores produced and any other element of taxable value in lieu of which the tax herein is levied. The said board shall have power and it shall be its duty to raise or lower the rates herein imposed to conform thereto. An appeal may be had from the decision of the State Board of Equalization thereon, by any person aggrieved, to the Supreme Court, in like manner and with like effect as provided by law in other appeals from said board to said court; provided, that after such tax has been collected and distributed, or paid without protest, no complaint with reference to rate thereof shall be heard or considered.¹

§ 114. Proceedings and Penalty on Delinquency.—The tax provided for in the preceding section shall become delinquent

¹ For an able and exhaustive opinion holding the Gross Production Tax Law constitutional, see *In re Gross Production Tax of Wolverine Oil Co.*, 53 Okla. 24, 154 Pac. 362, L. R. A. 1916F, 141. For other cases on the same subject, see *Whitehill v. Howard*, 63 Okla. 176, 163 Pac. 947; *McAlester-Edwards Coal Co. v. Trapp*, 43 Okla. 510, 141 Pac. 794, disapproved by *Choctaw, O. & G. Ry. Co. v. Harrison*, 235 U. S. 292,

after the date fixed for each quarter annual report to be filed in the office of the State Auditor and from such time shall, as a penalty for such delinquency, bear interest at the rate of eighteen per cent per annum, and shall be collected in the manner hereinafter provided. If any person, firm, association, or corporation shall fail to make the report of the gross production of any mine or oil or gas well, upon which a tax is herein provided for within the time prescribed by law for such report it shall be the duty of the State Auditor to examine the books, records and files of such person, firm, association or corporation to ascertain the amount and value of such production to compute the tax thereon as provided herein, and he shall add thereto the cost of such examination, together with any penalties accrued thereon.

(Sec. 7465, Rev. Laws 1910.)

§ 115. **Rebates Payable, When.**—When satisfactory evidence under oath is produced to the State Auditor that any person, firm, association, or corporation engaged in mining or producing within this State asphalt, lead, zinc, jack, gold, silver, copper, or petroleum or other mineral oil have in this State manufactured or refined any portion of such products in this State and thereafter on the finished products have paid ad valorem

35 Sup. Ct. Rep. 27, 59 L. Ed. 234; *Comanche Light & Power Co. v. Nix*, 53 Okla. 220, 156 Pac. 293, which follows *Meyer v. Wells Fargo & Co.*, 223 U. S. 298, 32 Sup. Ct. Rep. 218, 56 L. Ed. 445.

For cases on the power of the State to impose a gross production tax upon a federal agency, see *Whitehill v. Howard*, 63 Okla. 176, 163 Pac. 947; *Protest of Bendelari*, Gross Production Tax 1919, 82 Okla. 97, 198 Pac. 606; *Large Oil Co. v. Howard*, 63 Okla. 143, 163 Pac. 537, reversed by U. S. Supreme Court in 248 U. S. 549, 63 L. Ed. 416; *In re Skelton Lead & Zinc Co.*, 81 Okla. 134, 197 Pac. 495, holding that royalties due an Indian from restricted lands are not taxable under this Act.

It is the duty of the State Board of Equalization to raise or lower the rates to conform to an ad valorem basis. *Exchange Oil Co. v. State*, 80 Okla. 52, 193 Pac. 999.

(S. L. 1916, p. 102, Sec. 1.)

taxes, the State Auditor is hereby authorized to rebate and pay to such person, firm, association or corporation the just proportion of taxes paid by said person, firm, association or corporation, on his or its crude productions under Sections 7464 (Sec. 113 herein) which shall have been found to have been turned into finished product as aforesaid, and cause such sum, if any, so rebated, to be repaid by warrant drawn on the State Treasurer.

(Sec. 7466, Rev. Laws 1910.)

§ 116. **Levy and Sale for Delinquent Taxes.**—That Section 2 of Subdivision “A”, of Article 2, Chapter 107, of the Session Laws of Oklahoma, 1915, be and the same is hereby amended to read as follows:

Section 2. That Section 7467 of the Revised Laws of Oklahoma, 1910, be amended to read as follows:

Section 7467. When any tax provided for in this Act shall become delinquent as provided in Section 7465, Revised Laws, 1910 (Sec. 114 herein), the State Auditor shall issue his warrant directed to the sheriff of any county wherein the same or any part thereof accrued, for the collection of the amount of said tax, interest and penalty, and the sheriff to whom said warrant shall be directed shall proceed to levy upon the property, assets and effects of the person, firm, association or corporation against whom said tax is assessed, and to sell the same and to make return thereof as upon execution. Such tax, interest and penalty shall constitute and remain a lien upon the property, assets and effects of such person, firm, association or corporation until paid, and may be recovered at the suit of the State in any court of competent jurisdiction of the county where any such property, assets and effects are located.

(S. L. 1916, p. 106, Sec. 2.)

§ 117. **Purchasers Must File Reports.**—That Section 3 of Subdivision “A” of Article 2 of Chapter 107 of Sessions Laws of Oklahoma, 1915, be and the same is hereby amended to read as follows:

Section 3. It shall be the duty of every purchaser of petroleum or other crude oil or mineral oil or of natural gas from producers thereof within the State, within thirty days after the expiration of the quarter-annual period expiring, respectively, on the last day of June, September, December and March of each year, to file with the State Auditor a statement under oath on a form prescribed by him, showing the name and address of each producer from whom such oil and gas was purchased during the quarter-annual period last expiring together with the price therefor and such other information as the State Auditor may require; provided, that the State Auditor may require such purchaser, hereinbefore named, to keep for his inspection separate books, records and files in this State. Any purchaser of such products heretofore named in this section, or any person, firm, association or corporation engaged in mining or production within this State of asphalt, or of ores bearing lead, zinc, jack, gold, silver, copper or petroleum or crude oil or other mineral oil or of natural gas, who shall fail to file any sworn statement required by any of the provisions of this Act in the manner and in the time prescribed herein shall be liable to a penalty of one hundred dollars for each day he shall so fail or refuse to file such statement or comply with said provisions, which shall be a lien upon all the property and assets of such purchaser or producer located in this State and may be recovered at the suit of the State in any court of competent jurisdiction.

(S. L. 1916, p. 106, Sec. 3.)

§ 118. **Reports of Shippers.**—It shall be the duty of every railroad company, pipe line or transportation company to furnish to the State Auditor, through the Corporation Commission, any and all data relative to the shipment of crude oil that may be required to properly enforce the provisions of this Act. The failure of any railroad company, pipe line or transportation company to comply with the provisions of this section shall make such company liable to a penalty of one hun-

dred dollars for each day it shall fail to furnish such statement or comply with the provisions of this Act.

(S. L. 1916, p. 107, Sec. 4.)

§ 119. **Distribution and Use of Taxes.**—That Section 4 of Subdivision "A", of Article 2, Chapter 107, of the Session Laws, 1915, be and the same is hereby amended to read as follows:

Section 4. The gross production tax provided for in this Act is hereby levied and collected for the following specific purposes, to-wit:

- (1) For current expenses of State Government: Two-thirds.
- (2) For and in aid of the common schools of the county from whence the oil or gas and other mineral is produced, one-sixth (five mills).
- (3) For and in aid of the construction of permanent roads and bridges of the county from whence the oil or gas and other mineral is produced, one-sixth (five mills).

It shall be the duty of the State Auditor to pay two-thirds of all gross production taxes levied and collected under the provisions of this Act to the State Treasurer to be credited to the general revenue fund of the State, and applied to the current expenses of State Government; and to pay one-third the sum collected from each county whence the oil or gas or asphalt or of ores bearing lead, zinc, jack, gold, silver or copper was produced to the county treasurer of such county; one-half the amount so paid to the county treasurer to be credited to the common school fund of the county in proportion to the school population of such county; the remaining one-half so paid to the county treasurer to be credited to a fund of such county known as the road and bridge fund; provided, that should the rate of tax herein levied be raised or lowered by the State Board of Equalization, as authorized in Section 1 of this Act,

such increase or decrease shall be added to, or deducted from, that portion of the tax which is levied for the current expenses of State Government.²

(S. L. 1916, p. 108, Sec. 5.)

§ 120. **Validity of Provision.**—In case Section 5 of this Act shall for any reason become ineffective, then at once shall the proceeds of all gross production tax collected under the provisions of this Act be paid into the general revenue fund of the State and be applied to the current expenses of the State Government; and unexpended balance at the end of any fiscal year to be distributed as any other common school funds of the State.

(S. L. 1916, p. 109, Sec. 6.)

§ 121. **Act Not Retroactive.**—The passage and approval of this Act shall not be held or construed as affecting any tax and the collection and distribution thereof under existing laws upon asphalt, oil, gas or any other mineral ores herein enumerated, produced prior to the date this Act becomes effective. But all such taxes shall be collected and distributed under such existing laws as though this Act had never been passed.

(S. L. 1916, p. 109, Sec. 7.)

§ 122. **Effect of Invalid Parts of Act.**—The invalidity of any section, subdivision, paragraph, provision, sentence, or clause

² Board of Education v. Corey, 63 Okla. 178, 163 Pac. 949, holding that schools in cities of the first class are "common schools," within the meaning of this section.

Pickett v. Smith, 75 Okla. 155, 182 Pac. 680, holding that county treasurer should include in the apportionment all resident school children of the producing county, notwithstanding the fact that a portion of them are included in a joint school district, the larger portion of which is in an adjoining county. See, also, Board of Commissioners of Creek County v. Alexander, 58 Okla. 128, 159 Pac. 311.

of this Act shall not in any manner effect the validity of the remaining portion thereof.

(S. L. 1916, p. 110, Sec. 8.)

§ 123. **False Report Deemed Perjury.**—Any person who shall make any false oath to any report required by the provisions of this article shall be deemed guilty of perjury.

(Sec. 7468, Rev. Laws 1910.)

CHAPTER XVII.

OIL AND GAS WELL LIENS.

§ 124. Liens for labor and material.

125. Same—subcontractor.

126. Discharge of lien.

127. How lien is enforced.

128. Statement to be filed.

129. Lien by or through sub-contractor.

§ 124. **Liens for Labor and Material.**—That Section 3865 of the Revised Laws of Oklahoma, 1910, be and the same is hereby amended to read as follows:

“Any person, corporation or co-partnership who shall, under contract, express or implied, with the owner of any leasehold for oil and gas purposes or the owner of any gas pipe line or oil pipe line, or with the trustee or agent of such owner, perform labor or furnish material, machinery and oil well supplies used in the digging, drilling, torpedoing, completing, operating or repairing of any oil or gas well, or who shall furnish any oil or gas well supplies, or perform any labor in constructing or putting together any of the machinery used in drilling, torpedoing, operating, completing or repairing any oil or gas well, shall have a lien upon the whole of such leasehold or oil pipe line or gas pipe line, or lease for oil and gas purposes, the buildings and appurtenances, and upon the material and supplies so furnished and upon the oil or gas well for which they were furnished, and upon all the other oil or gas wells, fixtures and appliances used in the operating for oil and gas purposes upon the leasehold for which said material and supplies were furnished or labor performed. Such lien shall be preferred to all other liens or incumbrances which may attach to or upon said leasehold for gas and oil purposes and upon any oil or gas pipe line, or such oil and gas wells and the material and machinery so furnished and the leasehold for oil

and gas purposes and the fixtures and appliances thereon subsequent to the commencement of or the furnishing or putting up of any such machinery or supplies; and such lien shall follow said property and each and every part thereof, and be enforceable against the said property wherever the same may be found; and compliance with the provisions of this article shall constitute constructive notice of the lien claimant's lien to all purchasers and encumbrancers of such property or any part thereof, subsequent to the date of the furnishing of the first item of material or the date of the performance of the first labor.

(S. L. 1919, p. 367, Sec. 2.) See Form No. 10 herein. *Uncle Sam Oil Co. v. Richards*, 60 Okla. 63, 158 Pac. 1187.

§ 125. **Same—Sub-Contractor.**—Any person, co-partnership or corporation who shall furnish such machinery or supplies to a sub-contractor under a contractor, or any person who shall perform such labor under a sub-contract with a contractor or who, as an artisan or day laborer in the employ of such contractor, shall perform any such labor, may obtain a lien upon said leasehold for oil and gas purposes or any gas pipe line or any oil pipe line from the same tank and in the same manner and to the same extent as the original contractor for the amount due him for such labor, as provided in the preceding section.

(Sec. 3866, Rev. Laws 1910.) *Christy v. Union Oil & Gas Co.*, 28 Okla. 324, 114 Pac. 740.

§ 126. **Discharge of Lien.**—Any person against whom a claim is filed under the provisions of the law relating to mechanics' and materialmen's liens may at any time upon three (3) days' notice in writing to the claimant discharge such lien by depositing with the Court Clerk in whose office such lien claim has been filed the amount of such claim in cash and executing and filing with such Court Clerk a good and sufficient bond to the claim and with adequate, solvent sureties conditioned that such person will pay any reasonable attorney's fee and all court

costs, and interest, that may be adjudged against him finally by any court of competent jurisdiction in the event such claimant recovers judgment on such claim in the amount for which such claim is filed; provided, the deposit of such cash and the execution and filing of such bond shall not operate to discharge such lien until the expiration of five (5) days after the deposit of such cash and the filing of such bond, during which time the lien claimant may apply to such clerk to have the surety on such bond increased, and if upon such investigation the bond proves to be insufficient the clerk shall immediately require such additional surety thereon as may be necessary to make such bond solvent, and the lien shall not be discharged until any additional surety ordered shall have been given and approved. In any suit on such claim the sureties on such bond may be made parties defendant and judgment may be rendered in such action on the bond for whatever amount the court may decree for a reasonable attorney's fee, costs of suit and interest, but in the event the lien claimant does not recover judgment finally for the full amount of the cash deposited no liability shall exist upon said bond and no judgment shall be rendered thereon for any amount, and the balance of such cash deposit over and above the amount of the claim filed shall be returned by such clerk to the person depositing same. Appeals may be taken by any party to the action in the same manner and to the same extent as in other civil actions.

(S. L. 1919, p. 386, Sec. 3.)

§ 127. How Lien Is Enforced.—The liens herein created on gas and oil property shall be enforced in the same manner, and notice of the same shall be given in the same manner, and the materialman's statement or the lien of any laborer herein mentioned shall be filed in the same manner as is provided for in this chapter for enforcing other liens.

(Sec. 3867, Rev. Laws 1910.)

§ 128. Statement to Be Filed.—Any person claiming a lien as aforesaid shall file in the office of the clerk of the district

court of the county in which the land is situated a statement setting forth the amount claimed and the items thereof as nearly as practicable, the names of the owner, the contractor, the claimant, and a description of the property subject to the lien, verified by affidavit; Provided, that if any promissory note, bearing a lawful rate of interest, shall have been taken for any such labor or material, it shall not be necessary to file an itemized statement of labor or material furnished, but in lieu thereof it shall be sufficient to file a copy of such note, with a sworn statement that said note, or any part thereof, was given for such labor or material used in the construction of such building or improvement; and if the whole of such note shall have been given for such labor or material, the lien shall be for the whole of the principal and interest of said note; but if a part of said note only shall have been given for such labor or material, then the lien shall be for a corresponding amount only, with interest at the rate specified in said note. Such statement shall be filed within four months after the date upon which material was last furnished or labor last performed under contract as aforesaid; and if the claim be for the planting of any trees, vines, plants, or hedge, such statement shall be filed within four months from such planting. Immediately upon the receipt of such statement the clerk of the district court shall enter a record of the same in a book kept for that purpose, to be called the mechanics' lien docket, which shall be ruled off into separate columns, with headings as follows: "When Filed," "Name of Owner," "Name of Claimant," "Amount Claimed," "Description of Property," and "Remarks," and the clerk shall make the proper entry in each column.

(Sec. 3863, Rev. Laws 1910.) See Form No. 10 herein. *Cline v. Pattin Bros. Co. (Okla.)*, 156 Pac. 167.

§ 129. Lien By or Through Sub-Contractor.—Any person who shall furnish any such material or perform such labor as a sub-contractor, or as an artisan or day-laborer in the employ of the contractor, may obtain a lien upon such land, or improve-

ments, or both, from the same time, in the same manner, and to the same extent as the original contractor, for the amount due him for such material and labor; and any artisan or day-laborer in the employ of, and any person furnishing material to such sub-contractor, may obtain a lien upon such land, or improvements, or both, for the same time, in the same manner, and to the same extent as the sub-contractor, for the amount due him for such material and labor, by filing with the clerk of the district court of the county in which the land is situated, within sixty days after the date upon which material was last furnished or labor last performed under such sub-contract, a statement, verified by affidavit, setting forth the amount due from the contractor to the claimant, and the items thereof, as nearly as practicable, the name of the owner, the name of the contractor, the name of the claimant, and a description of the property upon which a lien is claimed, and by serving a notice in writing of the filing of such lien upon the owner of the land or improvements, or both: Provided, that if with due diligence the owner cannot be found in the county where the land is situated, the claimant, after filing an affidavit setting forth such facts, may serve a copy of such statement upon the occupant of the land, or the occupant of the improvements, as the case may be; or, if the same be unoccupied, he may post such copy in a conspicuous place upon the land or any building thereon. Immediately upon the filing of such statement, the clerk of the district court shall enter a record of the same in the docket provided for in the preceding section, and in the manner therein specified: Provided, further, that the owner of any land affected by such lien shall not thereby become liable to any claimant for any greater amount than he contracted to pay the original contractor. The risk of all payments made to the original contractor shall be upon such owner until the expiration of the sixty days herein specified, and no owner shall be liable to an action by such contractor until the expiration of said sixty days; and such owner may pay such sub-contractor the amount due him from such contractor for such labor and material, and the amount so paid shall be

held and deemed a payment of said amount to the original contractor.¹

(Sec 3864, Rev. Laws 1910.)

¹ Alberti v. Moore, 20 Okla. 78, 93 Pac. 543, 14 L. R. A. (NS) 1036; Christy v. Union Oil & Gas Co., 28 Okla. 324, 114 Pac. 740; Walton Lumber Co. v. Cox, 29 Okla. 237, 116 Pac. 798; Scroggy v. Kelley, 32 Okla. 398, 122 Pac. 694; Steger Lumber Co. v. Oklahoma Presbyterian College, 34 Okla. 827, 127 Pac. 381; Joplin Sash & Door Works v. Oklahoma Presbyterian College, 36 Okla. 547, 129 Pac. 40, 43 L. R. A. (NS) 158n; Eberle v. Drennan, 40 Okla. 59, 136 Pac. 162; Union Bond & Inv. Co. v. Bernstein, 40 Okla. 527, 139 Pac. 974; Steger Lumber Co. v. Haynes, 42 Okla. 716, 142 Pac. 1031; Hoggson Bros. v. Dickason-Goodman Lumber Co., 196 Pac. 686; Republic Supply Co. v. Powell (Okla.), 175 Pac. 519.

CHAPTER XVIII.

EMINENT DOMAIN GRANTED.

§ 130. Eminent domain granted power companies.

131. Rights granted not to interfere with public.

132. Rights same as railroads.

§ 130. **Eminent Domain Granted Power Companies.**—Any person, firm or corporation organized under the laws of this State, or qualified to do business in this State to furnish light, heat or power by electricity, gas or oil, provided the same shall not apply to interstate pipe lines, shall have the right to use the public roads and highways in this State for the purpose of erecting poles or posts along or across the same, and sustain their wires and fixtures thereon, or to lay under the surface of said roads or highways pipes or conduits for the purpose of selling electricity and gas or either, for light, heat or power, upon obtaining the consent of the Board of County Commissioners of the county or counties in which the public highways are proposed to be used for such purpose, such consent to be evidenced by a resolution by such board or boards entered of record, and such resolution shall specifically describe the particular highway or highways to be used and the terms and conditions under which the same are to be used, but said poles and wires and fixtures shall be erected, placed, adjusted or laid and maintained under such rules and regulations as shall be prescribed by the Board of County Commissioners of the county in which said roads or highways are located. Provided, that said board may fix and collect an annual franchise tax, which said tax, when collected, shall be available for the improvement or maintenance of the particular highway covered by such franchise. Provided, further, that nothing herein contained shall be construed to grant the right to use the streets or other public places of any city or incorporated town, of this State without the consent of such city or incorporated town, as required by Article 18 of the Constitution of this

State; and provided, further, that such poles, wires, conduits and equipment shall be erected, placed, adjusted, laid, constructed and maintained so as not to incommode or endanger the public in the use of its roads, highways and thoroughfares. The failure of such corporation to construct or maintain its poles, wires, conduits or equipment upon or under such public highways in complete accord with the rules and regulations prescribed by the Board of County Commissioners of the county in which said public highway is located, shall ipso facto forfeit the rights of such corporation to the use of such public highway or highways; and such corporation may thereupon be ousted by proper legal proceedings in a court of competent jurisdiction from the use and occupance of such public highway or highways. And, provided further, that nothing herein contained shall be construed to abridge or affect the rights of abutting property owners along the highway.

(S. L. 1917, p. 429, Sec. 1.)

§ 131. Rights Granted Not to Interfere with Public.—The rights herein granted shall not be so exercised as to interfere with the free and ordinary use of public highways or the exercise of the rights of other public utilities lawfully located thereon. In addition to the authority now or hereafter conferred upon the corporation commission by the Constitution and laws of this State, said commission shall have authority to hear and determine all complaints and controversies involving any interference with public rights, or the right of other public service concerns in connection with the exercise of the rights and authority herein granted to light, heat and power companies, and fix reasonable terms and conditions to be complied with by the respective parties. Proceedings on complaint under this act shall be upon notice and subject to the right of appeal as in other cases where notice and right of appeal is granted under the laws of this State.

(S. L. 1917, p. 430, Sec. 2.)

§ 132. Rights Same as Railroads.—Any person, firm or corporation organized under the laws of this State, or authorized

to do business in this State, to furnish light, heat or power by electricity or gas, or any other person, association or firm engaged in furnishing light, heat or power by electricity or gas, shall have and exercise the right of eminent domain in the same manner and by like proceedings as provided for railroad corporations by law of this State.

(S. L. 1917, p. 431, Sec. 3.) See Sec. 68 herein.

CHAPTER XIX.

USE OF NITRO-GLYCERIN AND OTHER EXPLOSIVES.

§ 133. Transportation in cities prohibited.

134. Shooting wells within city limits.

135. Authority of officers.

136. Penalty for violation.

137. Vehicles transporting nitro-glycerin to be labeled.

138. Gasoline kept in red tanks.

139. Penalty.

§ 133. **Transportation in Cities Prohibited.**—It shall be unlawful from and after the passage of this Act for any person, partnership, or corporation to haul, transport or cause to be hauled or transported in any manner, any nitro-glycerin over, across, or upon any street, alley or highway of any city, town or village, or any highway or lands within one-fourth mile of any city, town or village within this State.

(S. L. 1919, p. 347, Sec. 1; repealing by implication Sec. 6971, Rev. Laws 1910.)

§ 134. **Shooting Wells Within City Limits.**—It is further provided herein that if it becomes necessary at any time to shoot a well located within any city, town or village or within the prohibited distance prescribed herein, before such well is shot or any nitro-glycerin is taken within any city, town or village or within the prohibited distance herein prescribed, permission to take a sufficient amount of nitro-glycerin to shoot said well must first be obtained from the Mayor, City Council, Manager or Board of Trustees of such city, town or village where said well is to be shot.

(S. L. 1919, p. 374, Sec. 2.)

§ 135. **Authority of Officers.**—Any sheriff, deputy sheriff, or constable of any county within this State, or any policeman or marshal of any city, town or village shall have the right

to arrest any person for the violation of any of the provisions of this act.

(S. L. 1919, p. 347, Sec. 3.)

§ 136. Penalty for Violation.—Any person, partnership or corporation violating any of the provisions of this Act shall be fined not less than two hundred dollars (\$200.00) nor more than five thousand dollars (\$5,000.00) or by imprisonment in the county jail for a term not exceeding twelve (12) months nor less than sixty (60) days.

(S. L. 1919, p. 347, Sec. 4.)

§ 137. Vehicles Transporting Nitro-Glycerin to Be Labeled.—Every vehicle carrying or transporting nitro-glycerin shall have conspicuously marked thereon in letters not less than six inches in height on each side and the rear of such vehicle, the words "Nitro-Glycerine—Dangerous."

(Sec. 6972, Rev. Laws 1910.)

§ 138. Gasoline Kept in Red Tanks.—All grocers, druggists and all other vendors of gasoline in quantities of one hundred and fifty gallons and less are hereby required to put all gasoline by them hereafter kept for sale, or sold, in a red can, tank, barrel or other receptacle, which receptacle shall be labeled "Gasoline," and vendors of kerosene in quantities of two hundred fifty gallons or less shall not put kerosene in any can, tank, barrel or other receptacle painted red. Provided, that all dealers shall be required to keep for use and shall place all gasoline by them sold in red cans or other receptacles.

(Sec. 6975, Rev. Laws 1910.)

§ 139. Penalty.—Any grocer, druggist or other person who shall be convicted of a violation of the provisions of the preceding section shall be deemed guilty of a misdemeanor, and shall be fined not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00), and shall in addition thereto be liable in damages in civil suit for any damage resulting from a violation of the preceding section.

(Sec. 6976, Rev. Laws 1910.)

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA.

Prescribing rules governing the loading and unloading of casing-head gasoline, naptha, or any flammable liquid with a flashing point below 30 degrees F.	}	CAUSE No. 4356 ORDER No. 1932 <i>In re</i> Proposed Order No. 173
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FINDINGS OF FACT, OPINION AND ORDER.

The Commission on its own initiative issued Proposed Order No. 173, proposing to prescribe rules governing the loading or unloading of casing-head gasoline, naptha, or any flammable liquid with a flashing point below 30 degrees F.

Said proposed order was published, according to law, once a week for four weeks in the Daily Oklahoman, a newspaper of general circulation, published at the capital of Oklahoma.

By notice of hearing on said proposed order all parties interested were notified and directed to appear before the Corporation Commission at Oklahoma City on the 8th day of September, 1921, to offer testimony or any evidence, or otherwise to show cause why said proposed order should not be promulgated in due form as an order of the Corporation Commission.

On said date hearing was duly held, all members of the Commission being present. Objection was raised to one paragraph of the proposed order, to-wit: paragraph (4-e), as said order appeared in published notice, and upon the statement of objections thereto by numerous respondents said paragraph was stricken. No other objections were offered. All those present stated that with the elimination of Section (4-e), above referred to, the proposed order was acceptable and was considered a desirable and necessary regulation.

WHEREFORE, the Commission being fully advised in the premises, and having given due consideration to all matters contained and involved in said proposed order, and to all the testimony offered with relation thereto, it is the finding of the Commission that said proposed order is a necessary and desirable regulation in the interest of the safety of the public, and it is the order of the Commission that the following rules, regulations and requirements be promulgated and established to govern the loading and unloading of casing-head gasoline, naptha or any flammable liquid with a flashing point below 30 degrees F.

ORDER.

"The location of new loading racks and unloading points for volatile inflammable liquids is of great importance, and for the protection of life and property the following rules as to location of new installations shall govern. Casing-head gasoline is defined to be any mixture con-

taining the condensate from casing-head gas or natural gas obtained by either compression or absorption process and having a vapor tension in excess of 8 pounds per square inch."

LOADING.

(1-a) New loading racks for refinery gasoline, benzine, naptha or any liquid (other than casing-head gasoline) with a flashing point below 30 degrees F. must not be located nearer than 50 feet to a track over which passenger trains are moved when physical conditions permit, and in no case less than 25 feet.

(1-b) New loading racks for casing-head gasoline must be located not less than 100 feet distant from a track over which passenger trains are moved when physical conditions permit, and in no case less than 50 feet. When within 75 feet of such a track a retaining wall, dike or earthen embankment shall be placed between the installation and the track, so constructed as to effectually prevent liquids from flowing on to the track in case of accident.

(1-c) In loading casing-head gasoline, the tank car and the storage tank shall be so connected as to permit the free flow of the gasoline vapors from the tank car to the storage tank and to positively prevent the escape of these vapors to the air, or the vapors must be carried by a vent line to a point not less than 100 feet distant from the nearest track over which passenger trains are moved.

UNLOADING.

(2-a) When new unloading points requiring railroad service for the unloading of tank cars of refinery gasoline, benzine, naptha or any liquid (other than casing-head gasoline) with flash point below 30 degrees F. are required, the location shall be subject to negotiation between the carrier and the interested oil company.

(2-b) New locations for the unloading of casing-head gasoline shall be placed a minimum distance of 50 feet from a track over which passenger trains are moved where physical conditions do not permit a greater distance and a maximum distance of 100 feet shall be required where physical conditions permit; where old or new installations are placed within 75 feet of track over which passenger trains are moved a retaining wall, dike or earthen embankment shall be placed between the installation and the track, so constructed as to effectually prevent liquids from flowing on to the track in case of accident.

STORAGE.

(3-a) These regulations apply only to above ground tanks for which railroad service is required. Underground tanks should be considered above ground unless they are buried so that the top of the tank is cov

ered with at least three feet of earth. All tanks should be set upon a firm foundation and be electrically grounded.

(3-b) Each tank over 1,000 gallons in capacity shall have all man-holes, hand holes, vent openings and other openings which may contain inflammable vapor, provided with 20x20 mesh brass wire screen or its equivalent, so attached as to completely cover the openings and be protected against clogging; these screens may be made removable, but should be kept, normally, firmly attached. Such a tank must also be properly vented or provided with a suitable safety valve set to operate at not more than 5 pounds per square inch for both interior pressure and vacuum; manhole covers kept closed by their weight only will be considered satisfactory.

(3-c) Tanks used with a pressure discharge system must have a safety valve set at not more than one-half of the pressure to which the tank was originally tested.

(3-d) Tanks containing over 500 gallons and not exceeding 18,000 gallons of gasoline, benzine, naptha, casing-head gasoline, or any liquid with a flash point below 30 degrees F. must be located not less than 20 feet from a track over which passenger trains are moved. For capacities exceeding 18,000 gallons, the following distances shall govern:

Capacity of Tanks (in gallons)	Minimum Distance from a Track over which Passenger Trains are moved.
18,001 to 30,000	40 feet
30,001 " 48,000	50 "
48,001 " 100,000	60 "
100,001 " 150,000	80 "
150,001 " 250,000	100 "
250,001 " 500,000	150 "
Over 500,000	200 "

(3-e) Where practicable, tanks should be located on ground sloping away from railroad property. If this is impracticable, then the tanks must be surrounded by dikes of earth, or other suitable material, and of such nature and location that in case of breakage of the tanks the liquid will be diverted to points where passing trains will not be endangered.

GENERAL.

(4-a) In measuring distance from any railroad track the nearest rail shall be considered as the starting point. During the time that the tank car is connected by loading or unloading connections there must be signs placed on the track or car so as to give necessary warning. Such signs must be at least 12x15 inches in size and bear the

words: "STOP—TANK CAR CONNECTED" or "STOP—MEN AT WORK," the word "STOP" being in letters at least 4 inches high and the other words in letters at least 2 inches high. The letters must be white on a blue background. The party loading or unloading the tank car is responsible for furnishing, maintaining and placing these signs.

(4-b) In laying pipe lines on railroad property for the loading or unloading of tank cars, they must be laid at a depth of at least three feet, and at points where such pipe lines pass under tracks they must be laid at least 4 feet below the bottom of the ties. All connections between tank cars and pipe lines must be in good condition and must not permit any leakage. They must be frequently examined and replaced when they have become worn in order to insure at all times absolutely tight connections. Tank cars must not be left connected to pipe lines except when loading or unloading is going on and while a competent man is present and in charge.

(4-c) The ends of the pipe lines for loading or unloading tank cars from their bottom opening, when on railroad property should be placed in shallow pits with brick or concrete walls not closer than 8 feet from center line of track. These pits should be ventilated and protected by substantial one-piece covers, level with the surface of the ground, which must be kept locked in place when the pits are not in use. These pits should not be drained into a sewer or running stream.

(4-d) Except when closed electric lights are available the loading or unloading of tank cars on railroad property shall not be permitted except during daylight when artificial light is not required. The presence of flame lanterns, nearby flame switch lights or other exposed flame lights or fires during the process of loading or unloading is prohibited."

This order shall be in full force and effect from and after September 10, 1921.

Done at Oklahoma City, Oklahoma, this 9th day of September, 1921.

CORPORATION COMMISSION OF OKLAHOMA,

(Signed) CAMPBELL RUSSELL,
Chairman.

(Seal) (Signed) ART L. WALKER,
Commissioner.

(Signed) E. R. HUGHES,
Commissioner.

ATTEST:

(Signed) P. E. GLENN,
Secretary.

CHAPTER XX.

WORKMEN'S COMPENSATION LAW.

- Article I. Definitions.
- II. Liability.
- III. Insurance.
- IV. State Industrial Commission.
- V. Miscellaneous provisions.
- VI. Death.

ARTICLE I.

DEFINITIONS.

- § 140. Title.
- 141. Employments included in Act.
- 142. Definitions as used in Act.

§ 140. **Title.**—This Act shall be known as the “Workmen’s Compensation Law.”¹
(S. L. 1915, p. 572, Sec. 1.)

§ 141. **Employments Included in Act.**—Compensation provided for in this Act shall be payable for injuries sustained by employees engaged in the following hazardous employments, to-wit: Factories, cotton gins, mills and workshops where machinery is used; printing, electrotyping, photograving and stereotyping plants where machinery is used; foundries, blast furnaces, mines, wells, gas works, gasoline plants, oil refineries

¹ *Validity of Statute.* The constitutionality of the Oklahoma law has been upheld in *Adams v. Iten Biscuit Co.*, 63 Okla. 52, 162 Pac. 938.

Construction of Statute. The act must be construed as a whole, and all presumptions indulged will be in favor of those for whose protection the compensation was fixed. *Wick v. Gunn* (Okla.) 169 Pac. 1087.

The act must be construed so as to give effect to the various sections, and if such construction is possible, without doing violence to the spirit and language of the act. *Lahoma Oil Co. v. State Industrial Com.* (Okla.), 175 Pac. 836.

and allied plants and works, water works, reduction works, elevators, dredges, smelters, powder works, glass factories, laundries operated by power, creameries operated by power, quarries, construction and engineering works, **construction and operation of pipe lines**, tanneries, paper mills, transfer and storage, construction of public roads, wholesale mercantile establishments, employees employed exclusively as salesmen or clerical workers excepted; operation and repair of elevators in office buildings; logging, lumbering, street and interurban railroads not engaged in interstate commerce, buildings being constructed, repaired or demolished, farm buildings and farm improvements excepted; telegraph, telephone, electric light or power plants or lines; steam heating or power plants and railroads not engaged in interstate commerce.

(S. L. 1919, p. 14, Sec. 1; amending Sec. 2, p. 574, S. L. 1915.)

§ 142. Definitions as Used in Act.—

1. "Hazardous employment" shall mean manual or mechanical work or labor connected with or incident to one of the industries, plants, factories, lines, occupations or trades, mentioned in Section 2 of this Act, but shall not include anyone engaged in agriculture, horticulture, or dairy or stock raising, or in operating any steam railroad engaged in interstate commerce.

(Amended: S. L. 1919, p. 15, Sec. 2.)

2. "Commission" means the State Industrial Commission, as constituted by this Act.

The act does not apply in case of accident resulting in death, and no right of action for such injury is denied or affected. *Id.*

The meaning of a word used in the act must be construed in connection with words with which it is associated. *Board of Comrs. of Kingfisher County v. Grimes*, 75 Okla. 219, 182 Pac. 897.

The term "engineering works" (Sec. 142 herein) does not include or refer to work of an engineer on a public highway. *Id.*

Failure to give notice of injury, within the time required by Sec.

3. "Employer," except when otherwise expressly stated, means a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association, or corporation, employing workmen in hazardous employments, and shall include the State, county, city or any municipality when engaged in any hazardous work within the meaning of this Act in which workmen are employed for wages. Provided, however, that so long as by State law, city charter or municipal ordinance, provision equal to or better than that given under the terms of this Act is made for such employees injured in the course of employment, such employees shall not be entitled to the benefits of this Act.

4. "Employee" means any person engaged in manual or mechanical work, in the employment of any person, firm or corporation carrying on a business covered by the terms of this Act.

5. "Employment" includes employment only in a trade, business or occupation carried on by the employer for pecuniary gain.

6. "Compensation" means the money allowance payable to an employee as provided for in this Act.

7. "Injury or personal injury" means only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally and unavoidably result therefrom.

8. Art. 2 of the act (Sec. 150 herein), may be excused by the Industrial Commission. *Unity Drilling Co. v. Bentley*, 77 Okla. 76, 186 Pac. 239.

Under Sec. 15, Art. 2 of the Act (Sec. 156 herein), the duration of incapacity is a question of fact to be determined by the Commission. *Stephenson v. State Industrial Com.*, 79 Okla. 228, 192 Pac. 580.

Under Sec. 10, Art. 2 of the Act (Sec. 151 herein), the decision of the Commission is final as to all questions of fact. *Id.*

Under Sec. 12, Art. 2 of the Act (Sec. 153 herein), the Commission may at any time, on the ground of a change in conditions, review its

8. "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, including the reasonable value of board, rent, housing, lodging or similar advantage received from the employer.

9. "Insurance carrier" shall include stock corporations, reciprocal, or inter-insurance association, or mutual associations with which employers have insured, and employers permitted to pay compensation directly under the provisions of subdivision (d) of Section 1 of Article 3 of this Act.

10. "Factory" means any undertaking in which the business of working at commodities is carried on with power driven machinery either in manufacture, repair, cleaning or assorting and shall include the premises, yard and plant of the concern, but shall not include any such plants or machinery used on farms.

11. "Workshop" means any premises, yard, plant, room or place wherein power driven machinery is employed and manual or mechanical labor is exercised by way of trade for gain or otherwise or incidental to the process of making, altering, repairing, printing, or ornamenting, cleaning, finishing or adapting for sale or otherwise any article or part of articles, machine, or thing over which premises, room or place, the employer of the person working therein has the right of access or control.

former findings, and end, diminish, or increase the compensation previously awarded. *Choctaw Portland Cement Co. v. Lamb*, 79 Okla. 109, 189 Pac. 750.

Under Sec. 17, Art. 2 of the Act (Sec. 158 herein), where the claim is filed within one year after the injury, an application for an increased award for an increased injury, filed more than a year after the injury, is not barred. *Id.*

Under Sec. 1, Art 2 of the Act (Sec. 143 herein), an injury resulting from an assault by a workman upon a fellow workman while the lat-

12. "Mine" means any mine where coal, ore, mineral gypsum, or rock is dug or mined under the ground.

13. "Quarry" means an opening or cut from which coal is mined, or clay, ore, mineral gypsum, gravel, sand or rock is cut or taken for manufacturing, building, or construction purposes.

14. "Construction work" or engineering work means improvement or alteration or repair of buildings, structures, streets, highways, sewers, street railways, railroads, logging roads, interurban railroads, electric, steam or water plants, telegraph and telephone plants and lines, electric lines or power lines, and includes any other work for the construction, altering or repairing for which machinery driven by mechanical power is used.

(Amended: S. L. 1919, p. 15, Sec. 3.)

15. Where several classes or kinds of work is performed the commission shall classify such employment and the provisions of this Act shall apply only to such employees as are engaged in manual or mechanical labor of a hazardous nature.

(S. L. 1915, p. 574, Sec. 3.)

ARTICLE II.

LIABILITY.

§ 143. Compensation for disabilities.

144. When court action permissible.

145. Waiting time.

ter is engaged in the work of the master, is an accidental injury arising out of and in the course of employment. *Stasmas v. State Industrial Com.*, 80 Okla. 221, 195 Pac. 762.

The act must be liberally construed in favor of the injured employee. *Stasmas v. State Industrial Com.*, 80 Okla. 221, 195 Pac. 762; *Henley v. Okla. Union Ry. Co.*, 81 Okla. 224, 197 Pac. 488.

Under Sec. 6, Ch. 14, S. L. 1919 (Sec. 145 herein), if the disability continues for twenty-one days or more, compensation shall be computed from date of injury. *Smith v. State Industrial Com.*, 82 Okla. 157, 199 Pac. 217.

146. Medical treatment and care.
147. Basis of compensation.
148. Schedule of compensation.
149. Compensation to non-resident aliens.
- 150a. Notice—requirements.
- 150b. Medical examinations.
151. Filing of claims, arguments and hearings.
152. Certain presumptions in absence of evidence.
153. Review of awards.
154. Appeal to Supreme Court—requirements.
155. Costs, how taxed.
156. Payments, how and when made.
157. Failure to pay, penalty.
158. Rights barred after one year's neglect.
159. Damage by wrong of outsider.
160. Benefits or savings not considered.
161. Employee's agreements to pay premiums invalid.
162. Waivers invalid.
163. Claims non-assignable.
164. Liens for compensation.

§ 143. **Compensation for Disabilities.**—Every employer subject to the provisions of this Act shall pay, or provide as required by this Act, compensation according to the schedules of this Article for the disability of his employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of his employment, without regard to fault as a cause of such injury, except where the injury is occasioned by the wilful intention of the injured employee to bring about injury to himself or of another, or where the injury results directly from the wilful failure of the injured

What Injuries Included. It embraces all kinds of accidental injuries not resulting in death, but does not include willful or intentional injuries inflicted by the employer, nor injuries resulting from an intent upon the part of the employee to injure himself or another, or for a willful failure to use a guard or other protection against accident, required by statute or furnished pursuant to an order of the State Labor Commissioner. A willful or intentional injury, whether inflicted by the employer or employee, could not be considered as accidental, and therefore is not covered by the act. *Adam v. Iten Biscuit Co.*, 63 Okla. 52, 162 Pac. 938.

employee to use a guard or protection against accident furnished for his use pursuant to any statute or by order of the State Labor Commissioner or results directly from the intoxication of the injured employee while on duty. Provided, that the provisions of this Act shall not apply to any employer unless he shall employ more than two workmen; and, provided further, that a principal contractor, intermediate, or sub-contractor, shall be liable for compensation to any employee injured while in the employ of any of his intermediate or sub-contractors and engaged upon the subject matter of his contract, to the same extent as his immediate employer. Any principal, intermediate or sub-contractor, who shall pay compensation under the foregoing provision, may recover the amount paid from the subordinate sub-contractor through whom he may have been rendered liable under this section.

(S. L. 1919, p. 15, Sec. 4; amending Sec. 1, p. 577, S. L. 1915.)

§ 144. When Court Action Permissible.—The liability prescribed in the last preceding section shall be exclusive, except that if an employer has failed to secure the payment of compensation for his injured employee, as provided in this Act, then an injured employee, or his legal representatives if death results from the injury, may maintain an action in the courts for damages on account of such injury, and in such an action the defendant may not plead or prove as defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the

The willful failure contemplated carries with it the idea of premeditation, obstinacy, and intentional wrong doing. *Wick v. Gunn* (Okla.), 169 Pac. 1087.

Where injury was caused by the "horseplay" of a fellow workman, see *Willis v. State Industrial Com.*, 78 Okla. 216, 190 Pac. 92.

Where an employee received an injury which resulted in the complete loss of four fingers and a portion of the palm, and rendered the thumb of but little use, same will be considered a permanent loss of the use of the hand. *Bristow Cotton Oil Co. v. State Industrial Com.*, 77 Okla. 316, 188 Pac. 658.

employee. Provided, that this section shall not be construed to relieve the employer from any other penalty provided for in this Act for failure to secure the payment of compensation provided for in this Act.

(S. L. 1919, p. 16, Sec. 5; amending Sec. 2, p. 577, S. L. 1915.)

§ 145. **Waiting Time.**—No compensation shall be allowed for the first seven days of disability, except the benefits provided for in Section 4 of this Article. Provided, that should disability continue for twenty-one (21) or more days, compensation shall be computed from the date of injury.

(S. L. 1919, p. 17, Sec. 6; amending Sec. 3, p. 578, S. L. 1915.)

§ 146. **Medical Treatment and Care.**—The employer shall promptly provide for an injured employee such medical, surgical or other attendance or treatment, nurse and hospital service, medicine, crutches and apparatus as may be necessary, during sixty days after the injury or for such time in excess thereof as in the judgment of the commission may be required. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. The employee shall not be entitled to recover any amount expended by him for such treatment or services unless he shall have requested the employer to furnish the same and the employer shall have refused or neglected to do so. All fees and other charges for such treatment and services shall be subject to regulation by the Commission as provided in Section 14 of this article,

Where an injury caused the loss of the use of the entire arm it is equivalent to the loss of the arm, although the amputation of the arm was between the elbow and the wrist. *Choctaw Portland Cement Co. v. Lamb*, 79 Okla. 109, 189 Pac. 750.

Where injury is increased by unskillful medical treatment of physician furnished by employer, see *Booth & Flinn v. Cook*, 79 Okla. 280, 193 Pac. 36.

For injury resulting from an assault by a workman upon a fellow workman, while the latter is engaged in the work of the master, see *Stasmas v. State Industrial Com.*, 80 Okla. 221, 195 Pac. 762.

and shall be limited to such charges as prevail in the same community for similar treatment of an injured person of a like standard of living, and such charges shall not exceed the sum of one hundred (\$100.00) dollars, unless approved by the Commission; the Commission shall have authority to order a change of physicians when in its judgment such change is desirable, or necessary; provided, the employer shall not be liable to make any of the payments provided for in this section, in case of a contest of liability where the Commission shall decide that the injury does not come within the terms of this Act.

(S. L. 1919, p. 17, Sec. 7; amending Sec. 4, p. 578, S. L. 1915.)

§ 147. **Basis of Compensation.**—Except as otherwise provided in this Act, the average weekly wages of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation and shall be determined as follows:

1. If the injured employee shall have worked in the employment in which he was working at the time of the accident whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he shall have earned in such employment during the days when so employed.

2. If the injured employee shall not have worked in such employment during substantially the whole of such year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employee of the

Course of Employment. Where an employee, during an interval in his work, was warming himself by a fire on the premises of the employer, and was injured by the explosion of a piece of dynamite, thrown into the fire by a fellow employee to see if it would explode, it was held that the injury arose out of and in the course of his employment. *Willis v. State Industrial Com.*, 78 Okla. 216, 190 Pac. 92.

The test of liability for injuries arising out of and in the course of employment is not the master's dereliction, whether his own or that of his representatives acting within the scope of their authority, but

same class working substantially the whole of such immediately preceding year in the same or in a similar employment in the same or a neighboring place shall have earned in such employment during the days when so employed.

3. If either of the foregoing methods of arriving at the annual average earnings of an injured employee cannot reasonably and fairly be applied, such annual earnings shall be such sum as, having regard to the previous earnings of the injured employee and of other employees of the same or most similar class, working in the same or most similar employment in the same or neighboring locality, shall reasonably represent the annual earning capacity of the injured employee in the employment in which he was working at the time of the accident.

4. The average weekly wages of an employee shall be one-fifty-second part of his average annual earnings.

5. If it be established that the injured employee was a minor when injured, and that under normal conditions his wages would be expected to increase, the fact may be considered in arriving at his average weekly wages.

(S. L. 1915, p. 579, Sec. 5.)

§ 148. **Schedule of Compensation.**—The following schedule of compensation is hereby established:

1. **Permanent Total Disability.** In case of total disability adjudged to be permanent, fifty per centum of the average

is the relation of the service to the injury, of the employment to the risk. *Stasmas v. State Industrial Com.*, 80 Okla. 221, 195 Pac. 762.

Where an employee was working as a roustabout on a certain lease, and was injured by being burned in attempting to extinguish a fire which had accidentally developed on the lease, it was held that the injury was caused by an accident arising out of and in the course of his employment. *Associated Employers' Reciprocal v. State Industrial Com.*, 82 Okla. 229, 200 Pac. 174.

An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically

weekly wages shall be paid to the employee during the continuance of such total disability, not exceeding five hundred weeks. Loss of both hands, or both feet, or both legs, or both eyes or any two thereof, shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

2. Temporary Total Disability. In case of temporary total disability, fifty per centum of the average weekly wages shall be paid to the employee during the continuance thereof, but not in excess of three hundred weeks, except as otherwise provided in this Act.

(Amended: S. L. 1919, p. 18, Sec. 8.)

3. Permanent Partial Disability. In case of disability partial in character but permanent in quality the compensation shall be fifty per centum of the average weekly wages, and shall be paid to the employee for the period named in the schedule as follows:

Thumb: For the loss of a thumb, sixty weeks.

First Finger: For the loss of a first finger, commonly called the index finger, thirty-five weeks.

Second Finger: For the loss of a second finger, thirty weeks.

Third Finger: For the loss of a third finger, twenty weeks.

Fourth Finger: For the loss of a fourth finger, commonly called the little finger, fifteen weeks.

prescribed task if in the course of his employment he does some act which he deems necessary for the benefit of his employer. *Id.*

Compensation. The compensation provided by the act is exclusive, and a right of action in the courts therefor was abolished. *Adams v. Iten Biscuit Co.*, 63 Okla. 52, 162 Pac. 938.

Where one secured an award and died before the lapse of the maximum number of payments had been made, the right to compensation ceased with his death. *Lahoma Oil Co. v. State Industrial Com.* (Okla.), 175 Pac. 836.

Phalange of Thumb or Finger: The loss of the first phalange of the thumb or finger shall be considered equal to the loss of one-half of such thumb or finger, and compensation shall be one-half of the amount above specified; the loss of more than one phalange shall be considered as the loss of the entire thumb or finger; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

Great Toe: For the loss of a great toe, thirty weeks.

Other Toes: For the loss of one of the toes other than the great toe, ten weeks.

Phalange of Toe: The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of the amount specified. The loss of more than one phalange shall be considered as the loss of the entire toe.

Hand: For the loss of a hand, two hundred weeks.

Arm: For the loss of an arm, two hundred fifty weeks.

Foot: For the loss of a foot, one hundred fifty weeks.

Eye: For the loss of an eye, one hundred weeks.

Leg: For the loss of a leg, one hundred seventy-five weeks.

Loss of Use: Permanent loss of use of a thumb, finger, toe, arm, hand, foot, leg or eye, shall be considered as the equivalent of the loss of such thumb, finger, toe, hand, arm, foot, leg or eye.

Amputations: Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand.

Under Sec. 15, Art. 2 of the Act (Sec. 156 herein), the Commission has power to order the payment in one or more lump sums, instead of making an award of periodical payments. *Stephenson v. State Industrial Com.*, 79 Okla. 228, 192 Pac. 580.

Where an injury caused the loss of the use of the entire arm it is equivalent to the loss of the arm, although the amputation of the arm was between the elbow and the wrist, and claimant is entitled to compensation accordingly. *Choctaw Portland Cement Co. v. Lamb*, 79 Okla. 109, 189 Pac. 750.

Amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm. Amputation at or above the knee shall be considered as the loss of a leg. The compensation for the foregoing specific injuries shall be in lieu of all other compensations, except the benefits provided in Section 4 of Article 2 of this Act. In case of an injury resulting in the loss of hearing or in serious and permanent disfigurement of the head, face or hand, compensation shall be payable in an amount to be determined by the Commission, but not in excess of three thousand dollars. Provided, that compensation for loss of hearing or permanent disfigurement shall not be in addition to the other compensation provided for in this section, but shall be taken into consideration in fixing the compensation otherwise provided.

Other Cases: In all other cases in this class of disability the compensation shall be fifty per centum of the difference between his average weekly wages and his wage earning capacity thereafter in the same employment or otherwise payable during the continuance of such partial disability; not to exceed three hundred weeks, but subject to reconsideration of the degree of such impairment by the Commission on its own motion or upon the application of any party in interest.

(Amended: S. L. 1919, p. 18, Sec. 9.)

4. Temporary Partial Disability. In case of temporary partial disability, except the particular cases mentioned in sub-

The Commission has the power to modify its findings or orders from time to time, and to end, diminish or increase the compensation previously awarded. *Id.*

An injury resulting in the complete loss of four fingers and a portion of the palm, rendering the thumb of but little use, same will be considered a permanent loss of the use of the hand, and compensation allowed accordingly. *Bristow Cotton Oil Co. v. State Industrial Com.*, 77 Okla. 316, 188 Pac. 658.

The claimant is entitled to recover under the schedule of compensation for the extent of his disability, based upon the ultimate result

division three of this section, an injured employee shall receive fifty per centum of the difference between his average weekly wages and his wage earning capacity thereafter in the same employment or otherwise, if less than before the injury during continuance of such partial disability, but not in excess of three hundred weeks, except as otherwise provided in this Act.

(Amended: S. L. 1919, p. 20, Sec. 9, subdivision 4.)

5. Limitation. The compensation payment under the provisions of this Act shall not exceed the sum of eighteen (\$18.00) dollars per week or be less than eight (\$8.00) dollars per week; provided, however, that if the employee's wages at the time of the injury are less than eight (\$8.00) dollars per week he shall receive his full weekly wages; provided, further, that the compensation received as provided under subdivision 4 of this section shall not, when added to the wages received by such employee after such injury, amount to a greater sum than his average weekly wages received prior to said injury.

(Amended: S. L. 1919, p. 20, Sec. 9, subdivision 5.)

6. Previous Disability. The fact that an employee has suffered previous disability or received compensation therefor shall not preclude him from the compensation for a later injury, but in determining compensation for the later injury his average weekly wages shall be such sum as will reasonably represent his earning capacity at the time of the later injury.

(S. L. 1915, p. 580, Sec. 6.)

of the accident, regardless of the fact that the same has been aggravated and increased by the intervening negligence of the physician furnished by the employer. *Booth & Flinn v. Cook*, 79 Okla. 280, 193 Pac. 36.

The Commission is without jurisdiction to order the claimant to submit to a surgical operation to minimize the compensation. *Henley v. Okla. Union Ry. Co.*, 81 Okla. 224, 197 Pac. 488.

If the disability continues for twenty-one days or more, compensation is allowable from date of injury. *Smith v. State Industrial Com.*, 82 Okla. 157, 199 Pac. 217.

§ 149. **Compensation to Non-Resident Aliens.**—Compensation under this act to aliens not residents (or about to become non-residents) of the United States shall be the same in amount as provided for residents except that the Commission may, at its option, or, upon the application of the insurance carrier, shall commute all future installments of compensation to be paid to such aliens by paying or causing to be paid to them one-half of the computed amount of such future installments of compensation as determined by the Commission.

(S. L. 1915, p. 583, Sec. 7.)

§ 150a. **Notice—Requirements.**—Notice of an injury for which compensation is payable under this Act shall be given to the Commission and to the employer within thirty days after injury. Such notice may be given by any person claiming to be entitled to compensation, or by someone in his behalf. The notice shall be in writing, and contain the name and address of the employee, and state in ordinary language, the time, place, nature and cause of the injury, and be signed by him or by a person on his behalf. It shall be given to the Commission by sending it by mail, by registered letter addressed to the Commission at its office. It shall be given to the employer by delivering it to him or sending it by mail, by registered letter, addressed to the employer at his or its last known place of residence; provided, that, if the employer be a partnership then such notice may be given to any one of the partners, and if the employer be a corporation, then such notice may be given to any agent or officer thereof upon whom legal process

Evidence. The burden of proof is upon the employer to establish facts constituting a bar to compensation. *Wick v. Gunn (Okla.)*, 169 Pac. 1087.

The willful failure of a workman to use safety appliances is a question to be determined by the Commission from the facts in each particular case. *Id.*

Record examined and compensation in a lump sum for total incapacity held proper. *Stephenson v. State Industrial Com.*, 79 Okla. 228, 192 Pac. 580.

may be served, or any agent in charge of the business in the place where the injury occurred. The failure to give such notice, unless excused by the Commission either on the ground that notice for some sufficient reason could not have been given, or on the ground that the insurance carrier or employer, as the case may be, has not been prejudiced thereby, shall be a bar to any claim under this act.

(S. L. 1915, p. 583, Sec. 8.)

§ 150b. **Medical Examinations.**—An employee injured claiming or entitled to compensation under this Act, shall, if requested by the Commission, submit himself for medical examination at a time and from time to time, at place reasonably convenient for the employee, and as may be provided by the rules of the Commission. If the employee or the insurance carrier request he shall be entitled to have a physician or physicians of his own selection to be paid by him present to participate in such examination. If an employee refuses to submit himself to examination, his right to prosecute any proceeding under this Act shall be suspended, and no compensation shall be payable for the period of such refusal.

(S. L. 1915, p. 584, Sec. 9.)

§ 151. **Filing of Claims, Arguments and Hearings.**—At any time after the expiration of the first seven days of disability on the part of the injured employee, a claim for compensation may be presented to the Commission. If the employer and the injured employee shall reach an agreement as to the facts with relation to an injury, for which compensation is claimed under this Act, a memorandum of such an agreement, in form as pre-

The written opinion of a physician, not under oath, and given without notice to either party, is not sufficient to support an award. *Flynn v. Ponca City Milling Co.* (Okla.), 177 Pac. 366.

Appeal and Review. Plaintiff must file brief within time required by rule 5, governing appeals from Industrial Commission, or appeal will be dismissed upon motion. *Davis v. State Industrial Com.* (Okla.), 172 Pac. 638; *Blanlot v. Carbon Coal Co.*, 76 Okla. 16, 183 Pac. 880; *Mullen v. Mitchell*, 81 Okla. 201, 197 Pac. 171.

scribed by the Commission, and signed by both employer and employee, may be immediately filed by the employer with the Commission, and if approved by the Commission, shall, in the absence of fraud, be deemed binding upon the parties thereto. Such agreement shall be approved by the Commission only when the terms conform to the provisions of this Act.

The Commission shall have full power and authority to determine all questions in relation to the payment of claims for compensation under the provisions of this Act. The Commission shall make, or cause to be made, such investigation as it deems necessary, and upon application of either party shall order a hearing, and within thirty days after a claim for compensation is submitted under this section, or such hearing closed, shall make or deny any award, determining such claim for compensation, and file the same in the office of the Commission together with the statement of its conclusion of fact and rulings of law. The Commission may, before making an award, require the claimant to appear before an arbitration committee appointed by it and consisting of one representative of employees, one representative of employers, and either a member of the Commission or a person especially deputed by the Commission to act as chairman, before which the evidence in regard to the claim shall be adduced and by which it shall be considered and reported upon. Immediately after such filing the Commission shall send to the parties a copy of the decision. Upon a hearing pursuant to this section either party may present evidence and be represented by counsel. The decision of the Commission shall be final as to all questions of

The decision of the Commission is final as to all questions of fact. *Stephenson v. State Industrial Com.*, 79 Okla. 228, 192 Pac. 580; *Board of Comrs. of Cleveland County v. Barr (Okla.)*, 173 Pac. 206; *Raulerson v. State Industrial Com.*, 76 Okla. 8, 183 Pac. 880; *Francis Vitrio Brick Co. v. State Industrial Com.*, 76 Okla. 314, 185 Pac. 525; *Wilson Lumber Co. v. Wilson*, 77 Okla. 312, 188 Pac. 666; *Choctaw Portland Cement Co. v. Lamb*, 79 Okla. 109, 189 Pac. 750; *Mullen v. Mitchell*, 81 Okla. 201, 197 Pac. 171; *Booth & Flinn v. Cook*, 79 Okla. 280, 193 Pac. 36.

fact, and except as provided in Section 13 of this Article as to all questions of law.

(S. L. 1919, p. 21, Sec. 10; amending Sec. 10, p. 584, S. L. 1915.)

§ 152. Certain Presumptions in Absence of Evidence.—In any proceeding for the enforcement of a claim for compensation under this Act, it shall be presumed in the absence of substantial evidence to the contrary:

1. That the claim comes within the provisions of this Act.
2. That sufficient notice thereof was given.
3. That the injury was not occasioned by the wilful intention of the injured employee to bring about the injury of himself or of another.
4. That the injury did not result solely from the intoxication of the injured employee while on duty.
5. That the injury did not result directly from the wilful failure of the injured employee to use a guard or protection against accident furnished for his use pursuant to any statute or by order of the Labor Commissioner.

(S. L. 1915, p. 585, Sec. 11.)

§ 153. Review of Awards.—Upon its own motion or upon the application of any party in interest, on the ground of a change in conditions, the Commission may at any time review any award, and, on such review, may make an award ending, diminishing or increasing the compensation previously awarded, subject to the maximum or minimum provided in this act, and shall state its conclusions of fact and rulings of law, and shall immediately send to the parties a copy of the award. No such review shall effect such award as regards any money already paid.

(S. L. 1915, p. 586, Sec. 12.)

§ 154. Appeal to Supreme Court—Requirements.—The award or decision of the Commission shall be final and conclusive upon all questions within its jurisdiction between the parties, unless

within thirty days after a copy of such award or decision has been sent by said Commission to the parties affected, an action is commenced in the Supreme Court of the State to review such award or decision. Said Supreme Court shall have original jurisdiction of such action, and is authorized to prescribe rules for the commencement and trial of the same. Such action shall be commenced by filing with the clerk of the Supreme Court a certified copy of the award or decision of the Commission attached to the petition by the complainant, wherein the complainant or petitioner shall make his assignments or specifications as to wherein said award or decision is erroneous and illegal. Said proceeding shall be heard in a summary manner and have precedence over all other civil cases in such court, except preferred Corporation Commission appeals. The Commission shall be deemed a party to such proceeding and the Attorney General, without extra compensation, shall represent the Commission therein. Such action shall be subject to the law and practice applicable to other civil actions cognizable in said court. Upon the final determination of said action in which the award or decision of the Commission is sought to be reviewed, the Commission shall make an order or decision in accordance with the judgment of said court. The Commission shall not be liable for any costs apart from said proceeding, but otherwise the costs shall be taxed as in other cases.

(S. L. 1915, p. 585, Sec. 13.)

§ 155. **Costs, How Taxed.**—If the Commission or the court before which any proceedings for compensation or concerning an award of compensation have been brought, under this Act, determine that such proceedings have not been so brought on reasonable ground, it shall assess the whole cost of the proceedings on the party who has so brought them. Claims for legal services in connection with any claim arising under this act, and claims for services or treatment rendered or supplies furnished pursuant to Section 4, of Article 2 of this Act, shall not be enforceable unless approved by the Commission. If so approved such claim or claims shall become a lien upon the

compensation awarded, but shall be paid therefrom only in the manner fixed by the Commission.

(S. L. 1915, p. 587, Sec. 14.)

§ 156. Payments, How and When Made.—Compensation under the provisions of this Act shall be payable periodically, in accordance with the method of payment of the wages of the employee at the time of his injury and shall be so provided for in any award; but the Commission may determine that all payment or payments may be made monthly or at any other period, as it may deem advisable. The Commission, whenever it shall so deem advisable, may commute such periodical payments to one or more lump sum payments, provided the same shall be in the interest of justice. All payments as required by the award shall be made to the injured employee in the manner and form prescribed by the Commission. And employers and insurance companies shall for such purposes be permitted, or, when necessary to protect the interests of the beneficiary, may be required, to make deposits with the Commission to secure the prompt and convenient payment of such compensation.

(S. L. 1915, p. 587, Sec. 15.)

§ 157. Failure to Pay, Penalty.—If payment of compensation, or an installment thereof, due under the terms of an award, except in case of appeal from an award, be not made within ten days after the same is due, by the employer or insurance corporation liable therefor, the amount of such payment shall constitute a liquidated claim for damages against such employer or insurance corporation, which with an added penalty of fifty per centum may be recovered in an action to be instituted by the Commission in the name of the people of the State. If such default be made in payment of an installment of compensation and the whole amount of such compensation be not due, the Commission may, if the present value of such compensation be computable, declare the whole amount thereof due, and recover the amount thereof with the added penalty of fifty per centum, as provided in this section. Any such action may be compromised by the Commission or may be

prosecuted to final judgments, as in the discretion of the Commission, may best serve the interests of the persons entitled to receive the compensation for the benefits. Compensation recovered under this section shall be disbursed by the Commission to the persons entitled thereto in accordance with the award. A penalty recovered pursuant to this section shall be paid into the State Treasury, and be applicable to the expenses of the Commission.

(S. L. 1915, p. 588, Sec. 16.)

§ 158. Rights Barred After One Year's Neglect.—The right to claim compensation under this Act shall be forever barred unless within one year after the injury, a claim for compensation thereunder shall be filed with the Commission.

(S. L. 1915, p. 588, Sec. 17.)

§ 159. Damage by Wrong of Outsider.—If a workman entitled to compensation under this Act be injured by the negligence or wrong of another not in the same employ, such injured workman shall, before any suit or claim under this Act, elect whether to take compensation under this Act or to pursue his remedy against such other. Such election shall be evidenced in such manner as the Commission may by rule or regulation prescribe. If he elects to take compensation under this Act, the cause of action against such other shall be assigned to the insurance carrier liable for the payment of such compensation, and if he elects to proceed against such other person or insurance carrier, as the case may be, shall contribute only the deficiency, if any, between the amount of the recovery against such other person actually collected, and the compensation provided or estimated by this Act for such case. The compromise of any such cause of action by the workman at any amount less than the compensation provided for by this act shall be made only with the written approval of the Commission, and otherwise with the written approval of the person or insurance carrier liable to pay the same.

(S. L. 1915, p. 588, Sec. 18.)

§ 160. **Benefits or Savings Not Considered.**—No benefits, savings or insurance of the injured employee, independent of the provisions of this Act, shall be considered in determining the compensation or benefit to be paid under this Act.

(S. L. 1915, p. 589, Sec. 19.)

§ 161. **Employee's Agreements to Pay Premiums Invalid.**—No agreement by any employee to pay any portion of the premiums paid by his employer to the cost of mutual insurance or other insurance, maintained for or carried for the purpose of providing compensation as herein required, shall be valid, and any employer who makes a deduction for such purpose from the wages or salary of any employee entitled to the benefits of this Act shall be guilty of a misdemeanor.

(S. L. 1915, p. 589, Sec. 20.)

§ 162. **Waivers Invalid.**—No agreement by an employee to waive his right to compensation under this Act shall be valid.

(S. L. 1915, p. 589, Sec. 21.)

§ 163. **Claims Non-Assignable.**—Claims for compensation or benefits due under this Act shall not be assigned, released or commuted except as provided by this Act, and shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived. Compensation and benefits shall be paid only to employees.

(S. L. 1915, p. 590, Sec. 22.)

§ 164. **Liens for Compensation.**—The right of compensation granted by this Act shall have the same preference or lien without limit of amount against the assets of the employer as is now or hereafter may be allowed by law for a claim for unpaid wages for labor.

(S. L. 1915, p. 590, Sec. 23.)

ARTICLE III. INSURANCE.

§ 165. Employer's insurance.

166. Compliance, posting notices.

167. Failure to secure payment of compensation.

168. Policies, requirements in general.

§ 165. **Employer's Insurance.**—An employer shall secure compensation to his employees in one of the following ways:

(a) By insuring and keeping insured the payment of such compensation with any stock corporation or mutual association or by exchanging contracts of indemnity or inter-insurance, under reasonable regulations prescribed by the Commission providing for and securing the payment of the compensation provided in this Act, or other concerns authorized to transact the business of workmen's compensation insurance in this State. If insurance be so affected in such corporation or mutual association or reciprocal or inter-insurance association, the employer shall forthwith file with the Commission, in form prescribed by it, a notice specifying the name of such insurance corporation or mutual association or reciprocal or inter-insurance association together with a copy of the contract or policy of insurance.

(b) By obtaining and keeping in force guaranty insurance with any company authorized to do such guaranty business in this State; provided, that any person, firm, association or corporation engaged in the business of writing insurance as required of an employer by this Act who refuses to limit the policy to be written when requested by the assured, to employees engaged in hazardous employment, shall be guilty of a violation of the insurance laws of this State, and the State Insurance Board shall punish such violation as provided in Section 20, Chapter 174, Session Laws of Oklahoma, 1915, or

(c) Subject to the approval of the Commission, any employer may enter into or continue an agreement with his or their workmen to provide a scheme of compensation, benefits or insurance in lieu of the compensation and insurance provided by this Act; but such scheme shall in no instance provide less than the benefits here secured nor vary the period of compensation provided for disabilities or the provisions of this Act with respect to periodic payments or the percentage that such

payments shall bear to weekly wages, except that the sums required may be increased; provided, further, that the approval of the State Industrial Commission shall be granted, if the scheme provides for contributions by workmen, only when it confers benefits in addition to those required by this Act commensurate with such contributions.

(d) By furnishing satisfactory proof to the Commission of his financial ability to pay such compensation for himself, in which case the Commission may, in its discretion, require the deposit with the Commission of securities or indemnity bond in an amount and of a kind to be determined by the Commission to secure his liability to pay the compensation provided for in this Act.

If any employer fails to comply with this section he shall be liable to a penalty for every day which such failure continues of one dollar for every employee to be recovered in action brought by the Commission.

The Commission may, in its discretion, for good cause shown, remit any such penalty; provided, the employer in default secure compensation as provided in this section.

(S. L. 1919, p. 22, Sec. 11; amending S. L. 1915, p. 590, Sec. 1.)

§ 166. Compliance, Posting Notices.—Every employer who has complied with Section 1 of Article 3 of this Act, shall post and maintain in a conspicuous place or places in and about his place or places of business typewritten or printed notices in form prescribed by the Commission, stating the fact that he has complied with all the rules and regulations of the Commission and that he has secured the payment of compensation to his employees (and their dependents) in accordance with the provisions of this Act.

(S. L. 1915, p. 591, Sec. 2.)

§ 167. Failure to Secure Payment of Compensation.—Failure on the part of any employer to secure the payment of com-

pensation provided in this Act shall have the effect of enabling the Commission to proceed on behalf of an injured employee of such employer against the employer as provided in Section 2 of Article 2 of this Act, and as provided in Section 1 of Article 3 of this Act.

(S. L. 1915, p. 592, Sec. 3.)

§ 168. **Policies, Requirements in General.**—(a) Every policy of insurance covering the liability of the employer for compensation issued by a stock company or by mutual association or other concern authorized to transact workman's compensation insurance in this State shall contain a provision setting forth the right of the Commission to enforce in the name of the people of the State of Oklahoma for the benefit of the person entitled to the compensation insured by the policy either by filing a separate application or by making the insurance carrier a party to the original application, the liability of the insurance carrier in whole or in part for the payment of such compensation; provided, however, that payment in whole or in part of said compensation by either the employer or the insurance carrier shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

(b) Every such policy shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this Act, be jurisdiction of the insurance carrier and that the insurance carrier shall in all things be bound by and subject to the orders, finding, decisions or awards rendered against the employer for the payment of compensation under the provisions of this Act.

(c) Every such policy shall contain a provision to the effect that the insolvency or bankruptcy of the employer shall not relieve the insurance carrier from the payment of compensation for injuries sustained by an employee during the life of such policy.

(d) Every such policy shall contain a provision that, as the purpose of which is to indemnify him from loss or damage on account of the injury of an employee by accidental means, or on account of the negligence of such employer or his officer, agent or servant shall be absolutely void unless it shall also cover liability for the payment of the compensation provided for by this Act.

(e) No contract of insurance issued by a stock company, mutual association or other concern against the liability arising under this act shall be cancelled within the time limited in such contract for its expiration until at least ten days after notice of intention to cancel such contract, on a date specified in such notice shall be filed in the office of the Commission and also served on the employer. Such notice shall be served on the employer by delivering it to him or by sending it by mail, by registered letter addressed to the employer at his or its last known place of residence; provided, that if the employer be a partnership, then such notice may be so given to any one of the partners, and if the employer be a corporation, then the notice may be given to any agent or officer of the corporation upon whom legal process may be served.

(S. L. 1915, p. 592, Sec. 4.)

ARTICLE IV.

STATE INDUSTRIAL COMMISSION.

- § 169. Appointed by Governor.
- 170. Secretary to Commission.
- 171. Office of Commission.
- 172. Sessions—quorum—records.
- 173. Hearings, when held.
- 174. Secretary, power and duties.
- 175. Commission to adopt rules.
- 176. Record of all hearings.
- 177. Subpoenas, issuance and service.
- 178. Enforcement of orders.
- 179. Witness fees, how paid.
- 180. Depositions.
- 181. Transcripts of evidence.

182. Amendment of orders.

183. Reports made to the Governor.

184. Commission to furnish blank forms.

§ 169. **Appointed by Governor.**—A State Industrial Commission is hereby created, consisting of three commissioners, to be appointed by the Governor, by and with the advice and consent of the Senate. The term of office of the members of the Commission shall be six years, except that the term of office of the members thereof now serving shall expire on January 1, 1921, 1923, and 1925, respectively, as set out and provided in the Commission issued by the Governor to such members. Successors of said office shall be appointed in like manner for a term of six years. Vacancies shall be filled in like manner by the appointment for the unexpired term

Each member of the Commission shall, before entering upon the duties of his office, execute an official undertaking in the sum of ten thousand (\$10,000.00) dollars, to be approved by the Governor and filed in the office of Secretary of State. The Governor may remove any Commissioner for inefficiency, neglect of duty, or misconduct in office, giving him a copy of charges and opportunity of being publicly heard, in person or by counsel, upon not less than ten days' notice. If such Commissioner be removed the Governor shall file in the office of the Secretary of State a complete statement of all charges made against him and a complete record of his proceedings and his findings thereon. Each Commissioner shall devote his entire time to the duty of his office and shall not hold any position of trust or profit, or engage in any occupation or business interfering or inconsistent with his duties, or serve on or under any committee of a political party. The Commission shall have an official seal which shall be judicially noticed. The salary of each of the Commissioners shall be three thousand (\$3,000.00) dollars per annum, payable monthly as salaries of other State officers are paid, and shall be paid out of the State Treasury, and in addition to the said sum, each Commissioner shall be allowed all traveling expenses incurred by him when away

from the seat of government in the discharge of his official duties.

Immediately upon the passage of this Act the State Industrial Commission shall select one of its members as chairman who shall serve as chairman of said board until the first Monday in January, 1921, or until his successor is elected, as provided herein. When a vacancy exists in the chairmanship of said board it shall be the duty of said board to elect one of its members as chairman. A chairman of the State Industrial Commission shall be regularly elected on the first Monday in January, 1921, and each two years thereafter.

(S. L. 1919, p. 24, Sec. 15; amending S. L. 1915, p. 593, Sec. 1.)

§ 170. **Secretary to Commission.**—The Commission may employ a secretary, an actuary and such inspectors and other assistants as it may deem necessary and fix their compensation, both the number and compensation of such employees to be subject to the written approval of the Governor; such compensation shall be paid on vouchers signed by at least two of the Commissioners and paid out of the appropriation provided therefor. The members of the Commission and all assistants shall be entitled to receive their actual necessary expenses while traveling on the business of the Commission. Such expenses shall be itemized and sworn to by the person who incurred the expenses, and allowed by the Commission.

(S. L. 1915, p. 594, Sec. 2.)

§ 171. **Office of Commission.**—The Commission shall keep and maintain its principal office in the city of Oklahoma City, in rooms in the Capitol assigned by the Board of Affairs. The office shall be supplied with the necessary office furniture, supplies, books, maps, stationery, telephone connections and other necessary appliance, at the expense of the State, payable in the same manner as other expenses of the Commission.

(S. L. 1915, p. 595, Sec. 3.)

§ 172. **Sessions—Quorum—Records.**—The Commission shall be in continuous session and open for transaction of business

during all business hours of every day excepting Sunday and legal holidays. All sessions shall be open to the public, and may be adjourned upon entry thereof in its records, without further notice. Whenever convenience of parties will be promoted or delay and expense prevented the Commission may hold session anywhere in the State. Every vote and official act of the Commission shall be entered of record, and the record shall contain a record of each case considered and the award, decision or order made with respect thereto, and all voting shall be by the calling of each Commissioner's name by the secretary, and each vote shall be recorded as cast. A majority of the Commission shall constitute a quorum. A vacancy shall not impair the right of the remaining Commissioners to exercise all the powers of the full Commission so long as the majority remains.

(S. L. 1915, p. 595, Sec. 4.)

§ 173. **Hearings, When Held.**—Any investigation, inquiry or hearing with (which) the Commission is authorized to hold or undertake, may be held or taken at any place in the State by or before any Commissioner and the award, decision or order of a Commissioner, when approved and confirmed by the Commission, and ordered filed in its office shall be deemed to be the award, decision or order of the Commission. Each Commissioner shall, for the purpose of this act, have power to administer oaths, certify to official acts, take depositions, issue subpoenas, compel the attendance of witnesses, and the production of books, accounts, papers, records, documents and testimony. The Commission may authorize any inspector to conduct any such investigation, inquiry or hearing, in which case he shall have the power of a Commissioner in respect thereof.

(S. L. 1915, p. 596, Sec. 5.)

§ 174. **Secretary, Power and Duties.**—The secretary of the Commission shall:

1. Maintain a full and true record of all proceedings of the Commission, of all documents or papers ordered filed by the

Commission, of decisions or orders, made by a Commissioner, and of all decisions or orders made by the Commission or approved and confirmed by it, and ordered filed, and he shall be responsible to the Commission for the safe custody and preservation of all such documents at its office.

2. Have power to administer oaths in all parts of the State, so far as the exercise of such power is properly incident to the performance of his duty, or that of the Commission.

3. Designate, from time to time, with the approval of the Commission, one of the clerks appointed by the Commission, to exercise the powers and duties of the secretary during his absence.

4. Under the direction of the Commission, have general charge of its office, superintend its clerical business, and perform such other duties as the Commission may prescribe.

(S. L. 1915, p. 596, Sec. 6.)

§ 175. Commission to Adopt Rules.—The Commission shall adopt reasonable rules, not inconsistent with this Act, regulating and providing for:

1. The kind and character of notices, and the service thereof, in case of accident and injury to employees.

2. The nature and extent of the proofs and evidence, and the method of taking and furnishing the same, to establish the right to compensation.

3. The forms of application of those claiming to be entitled to compensation.

4. The method of making investigations, physical examinations and inspections.

5. The time within which adjudication and awards shall be made.

6. The conduct of hearing investigations and inquiries.

7. The giving of undertakings by all subordinates who are empowered to receive and disburse moneys, to be approved by

the Attorney General as to forms and by the Governor as to sufficiency.

8. Carrying into effect the provisions of this act.

(S. L. 1915, p. 597, Sec. 7.)

§ 176. **Record of All Hearings.**—The Commission or Commissioner or inspector in making an investigation of inquiry or conducting a hearing shall be required to preserve a complete record of all oral or documentary evidence considered, to any part of such evidence any party affected thereby may object, which objection shall be considered and passed on by the Commission and preserved in the record.

(S. L. 1915, p. 597, Sec. 8.)

§ 177. **Subpoenas, Issuance and Service.**—A subpoena shall be signed and issued by a Commissioner, an inspector or by the secretary of the Commission, and may be served by any person of full age and in the same manner as a subpoena issued out of a court of record. If a person fail, without reasonable cause, to attend in obedience to a subpoena, or to be sworn or examined or answer a question, or produce a book or paper, or to subscribe and swear to his deposition after it has been correctly reduced to writing, he shall be guilty of a misdemeanor.

(S. L. 1915, p. 598, Sec. 9.)

§ 178. **Enforcement of Orders.**—In case of disobedience of any person to comply with the order of the Commission, or subpoena issued by it, or one of its members, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or refuse to permit an inspection as aforesaid, the county judge of the county in which the person resides, or of the county in which such hearing is being conducted, on application of any member of the board, or any inspector or examiner appointed by it, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of requirements of subpoena issued from such court on a refusal to testify therein.

(S. L. 1915, p. 598, Sec. 10.)

§ 179. **Witness Fees, How Paid.**—Each witness who appears in obedience to a subpoena before the Commission, or a Commissioner, inspector, or a person employed by the Commission to obtain the required information, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid out of funds appropriated therefor in the same manner as other expenses of the Commission. A witness subpoenaed at the instance of a party other than the Commission, a Commissioner, inspector, or person acting under the authority of the Commission, shall be entitled to fees for compensation from the funds appropriated therefor if the Commission certify that his testimony was material to the matter investigated, but not otherwise.

(S. L. 1915, p. 598, Sec. 11.)

§ 180. **Depositions.**—The Commission may cause depositions of witnesses residing within or without the State to be taken in the manner prescribed by law for depositions in civil actions in courts of record.

(S. L. 1915, p. 599, Sec. 12.)

§ 181. **Transcripts of Evidence.**—A transcribed copy of the testimony, evidence and procedure or of a specific part thereof, or of the testimony of a particular witness or of a specific part thereof on any investigation, by a stenographer appointed by the Commission, being certified by such stenographer to be a true and correct transcript thereof and to have been carefully compared by him as (with) the original notes, may be received in evidence by the Commission with the same effect as if said stenographer were present and testified to the facts so certified, and a copy of said transcript shall be furnished on demand to any party upon payment of the fee provided for a transcript of similar minutes in courts of record.

(S. L. 1915, p. 599, Sec. 13.)

§ 182. **Amendment of Orders.**—The power and jurisdiction of the Commission over each case shall be continuing, and it may, from time to time, make such modification or change with

respect to former findings or orders relating thereto, as in its opinion may be just, including the right to require physical examination as provided for in Section 9 of Article 2 of this Act, and subject to the same penalties for refusal.

(S. L. 1915, p. 599, Sec. 14.)

§ 183. **Reports Made to the Governor.**—Annually on or before the first day of January, the Commission shall make a report to the Governor, to be by him transmitted to the Legislature, which shall include a statement of the number of awards made by it and the causes of the accidents leading to the injuries for which the awards were made, a detailed statement of the expenses of the Commission, together with any other matter which the Commission deems proper to report to the Governor, including any recommendations it may desire to make.

(S. L. 1915, p. 599, Sec. 15.)

§ 184. **Commission to Furnish Blank Forms.**—The Commission shall prepare and cause to be distributed so that the same may be readily available blank forms of application for compensation, notice to employees, proofs of injury, of medical or other attendance or treatment, of employment and wage earnings, and for such other purposes as may be required. Insured employers shall constantly keep on hand a sufficient supply of such blanks.

(S. L. 1915, p. 600, Sec. 16.)

ARTICLE V.

MISCELLANEOUS PROVISIONS.

§ 185. Expenses of Commission.

186. Employer's record of injuries.

187. Securing information.

188. Employer's records subject to inspection.

189. Act applicable to carriers.

190. False statements—misdemeanor.

191. Limitations of time.

192. Commissioner of labor to assist.

193. Validity of sections declared independent.

194. Pending actions and actions for death.

§ 185. **Expenses of Commission.**—All penalties imposed by this Act shall be applicable to the expenses of the Commission. When collected by the Commission such penalties shall be paid into the State Treasury, and be thereafter appropriated by the Legislature for the purpose prescribed by this section.

(S. L. 1915, p. 600, Sec. 1.)

§ 186. **Employer's Record of Injuries.**—Every employer shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within ten days or a reasonable time thereafter, after the occurrence of an accident resulting in personal injury, a report thereof shall be made in writing by the employer to the Commission upon blanks to be procured from the Commission for that purpose. Such reports shall state the name and nature of the business of the employer, the location of his establishment or place of work, the name, address and occupation of the injured employee, the time, nature, and cause of the injury and such other information as may be required by the Commission. Any employer who refuses or neglects to make a report as required by this section shall be guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars (\$500.00).

(S. L. 1915, p. 600, Sec. 2.)

§ 187. **Securing Information.**—Every employer shall furnish the Commission, upon request, any information required by it to carry out the provisions of this act. The Commission, a commissioner, or any inspector, may examine under oath any employer, officer, agent, or employee. An employer or employee receiving from the Commission a blank with directions to file the same shall cause the same to be properly filled out so as to answer fully and correctly all questions therein, or if unable to do so, shall give a good and sufficient reason for such failure. Answers to such questions shall be certified under oath and returned to the Commission within the period fixed by the Commission therefor.

(S. L. 1915, p. 601, Sec. 3.)

§ 188. **Employer's Records Subject to Inspection.**—All books, records and pay rolls of the employers showing or reflecting in any way upon the amount of wage expenditures of such employers shall always be open for inspection by the Commission or any other authorized auditors, accountants, or inspectors for the purpose of ascertaining the correctness of the wage expenditure and number of men employed and such other information as may be necessary for the purposes and uses of the Commission in the administration of this Act. No person shall be excused from testifying or from producing any books or papers or documents in any investigation or inquiry, by or upon any hearing before the Commission or any Commissioner, when ordered to do so by the Commission or its secretary, upon the ground that the testimony or pay roll or other competent evidence required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he shall under oath, have, by order of the Commission or a Commissioner or its inspector or examiner, testified to or produced documentary evidence of; provided, however, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony.

(S. L. 1915, p. 601, Sec. 4.)

§ 189. **Act Applicable to Carriers.**—That Section 5 of Article 5 of Chapter 246, of the Session Laws of the State of Oklahoma, 1915, be and the same is hereby repealed.

(S. L. 1919, p. 24, Sec. 13.)

§ 190. **False Statements—Misdemeanor.**—If for the purpose of obtaining any benefit or payment under the provisions of this Act, either for himself or any other person, any person wilfully makes a false statement or representation, he shall be guilty of a misdemeanor.

(S. L. 1915, p. 602, Sec. 6.)

§ 191. **Limitations of Time.**—No limitation of time provided in this Act shall run as against any person who is mentally

incompetent or a minor dependent so long as he has no committee, guardian or next friend.

(S. L. 1915, p. 602, Sec. 7.)

§ 192. **Commissioner of Labor to Assist.**—The Commissioner of Labor shall render to the Commission any proper aid and assistance by the department of labor as in his judgment does not interfere with the proper conduct of such department.

(S. L. 1915, p. 602, Sec. 8.)

§ 193. **Validity of Sections Declared Independent.**—If any section or provision of this Act be decided by the courts to be unconstitutional or invalid, the same shall not effect the validity of this act as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

(S. L. 1915, p. 602, Sec. 9.)

§ 194. **Pending Actions and Actions for Death.**—This Act shall not affect any action pending or cause of action existing or which has or may hereafter accrue to the dependents or other legal representatives of an injured employee in case death results from the injury after he has been awarded compensation under the provisions of this Act; provided, that for any injury for which compensation is not provided under the provisions of this Act the injured party shall have the right of action in the courts for his damage on account of such injury.

(S. L. 1919, p. 23, Sec. 12; amending S. L. 1915, p. 602, Sec. 10.)

ARTICLE VI.

DEATH.

§ 195. Death or injury resulting in death.

196. Actions for injuries.

197. Act, when effective.

§ 195. **Death or Injury Resulting in Death.**—It is not intended that any of the provisions of this Act shall apply in cases of accidents resulting in death and no right of action for

recovery of damages for injuries resulting in death is intended to be denied or affected.

(S. L. 1915, p. 603, Sec. 1.)

§ 196. **Actions for Injuries.**—The right of action to recover damages for personal injuries not resulting in death arising and occurring in hazardous employments as herein defined, except the right of action reserved to an injured employee or his dependents or other legal representatives in Section 2 of Article 2 and Section 10 of Article 5 of this Act, is hereby abrogated, and all jurisdiction of the courts of this State over such causes, except as to the cause reserved to such injured employees or their dependents or other legal representatives in Section 2 of Article 2 and Section 10 of Article 5 of this Act is hereby abolished.

(S. L. 1919, p. 24, Sec. 14; amending S. L. 1915, p. 603, Sec. 2.)

§ 197. **Act, When Effective.**—This Act shall take effect July 1, 1915, provided that the application of this Act as between employers and employees and the payment of compensation for injuries to employees shall take effect September 1, 1915.

(S. L. 1915, p. 603, Section 3.)

CHAPTER XXI.

FORFEITED LEASE TO BE RELEASED FROM RECORD.

§ 198. **Forfeiture of Lease—Release from Record—Penalty.**—When any lease on land heretofore or hereafter taken shall have become forfeited, it shall be the duty of the lessee, his, her, or their heirs, successors, assigns or legal representatives, within sixty (60) days from the date this Act shall take effect, if such forfeiture occurs prior thereto, and within sixty (60) days from date of forfeiture of any and all other leases, to have such leases released from record in the county where such land is situated, without cost to the owner or owners thereof; and upon failure to make such release, the owner or owners of the land under lease may notify in writing the holder of the record title to such lease, that the same has become forfeited and demand a release of record of such lease, as herein provided; and if the owner or holder of such lease, or the officer, agent, or other persons whose duty it is to release such lease, shall fail or neglect to release same within thirty (30) days after demand to release has been made in writing, he shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not exceeding one hundred dollars.¹

¹The original bill contains the following: "I did not approve this bill, but detained it for over five days. I doubt its validity as being in violation of the Constitution. See *Campbell v. State*, 23 Okla. 109. R. L. Williams, Governor."

(S. L. 1915, p. 605, Sec. 1.)

NO. 1. OIL AND GAS LEASE.
(PRODUCER'S 88—OKLAHOMA FORM.)

AGREEMENT, Made and entered into the.....day of
, 19....., by and between.....
 of.....party of the first part, hereinafter
 called lessor (whether one or more), and.....
 party of the second part, hereinafter called lessee.

WITNESSETH, That the said lessor, for and in consideration of
DOLLARS, cash in hand paid, receipt of
 which is hereby acknowledged and of the covenants and agreements
 hereinafter contained on the part of lessee to be paid, kept and per-
 formed, has granted, demised, leased and let and by these presents
 does grant, demise, lease and let unto the said lessee, for the sole
 and only purpose of mining and operating for oil and gas, and laying
 pipe lines, and building tanks, powers, stations and structures
 thereon to produce, save and take care of said products, all that cer-
 tain tract of land situate in the County of.....,
 State of Oklahoma, described as follows, to-wit: (Here describe
 land.)

It is agreed that this lease shall remain in force for a term of
years from this date, and as long thereafter as
 oil or gas, or either of them, is produced from said land by the lessee.

In consideration of the premises the said lessee covenants and
 agrees:

1st. To deliver to the credit of lessor, free of cost, in the pipe line
 to which he may connect his wells, the equal one-eighth part of all
 oil produced and saved from the leased premises.

2d. To pay the lessor.....DOLLARS,
 each year in advance, for the gas from each well where gas only is
 found, while the same is being used off the premises, and lessor to
 have gas free of cost from any such well for all stoves and all inside
 lights in the principal dwelling house on said land and during the
 same time by making his own connections with the wells at his own
 risk and expense.

3d. To pay lessor for gas produced from any oil well and used on
 the premises at the rate of.....DOLLARS
 per year, for the time during which gas shall be used, said payments
 to be made each three months in advance.

If no well be commenced on said land on or before the.....
 day of, 19....., this lease shall
 terminate as to both parties, unless the lessee on or before that date
 shall pay or tender to the lessor, or to the lessor's credit in the

..... Bank at
 or its successors, which shall continue as the depository regardless
 of changes in the ownership of said land, the sum of.....
 DOLLARS, which shall operate as a rental and cover the privilege of
 deferring the commencement of a well for.....months
 from said date. In like manner and upon like payment or tenders the
 commencement of a well may be further deferred for like period of the
 same number of months successively. And it is understood and agreed
 that the consideration first recited herein, the down payment, covers
 not only the privileges granted to the date when said first rental is
 payable as aforesaid, but also the lessee's option of extending that
 period as aforesaid, and any and all other rights conferred.

Should the first well drilled on the above described land be a dry
 hole, then, and in that event, if a second well is not commenced on
 said land within twelve months from the expiration of the last rental
 period which rental has been paid, this lease shall terminate as to
 both parties, unless the lessee on or before the expiration of said
 twelve months shall resume the payment of the rentals in the same
 amount and in the same manner as hereinbefore provided. And it is
 agreed that upon the resumption of the payment of rentals as above
 provided that the last preceding paragraph hereof governing the pay-
 ment of rentals and the effect thereof, shall continue in force just as
 though there had been no interruption in the rental payments.

If said lessor owns a less interest in the above described land than
 the entire and undivided fee simple estate therein, then the royalties
 and rentals herein provided shall be paid the lessor only in the pro-
 portion which his interest bears to the whole and undivided fee.

Lessee shall have the right to use, free of cost, gas, oil and water
 produced on said land for its operation thereon, except water from wells
 of lessor.

When requested by lessor, lessee shall bury its pipe lines below
 plow depth.

No well shall be drilled nearer than 200 feet to the house or barn
 now on said premises, without the written consent of the lessor.

Lessee shall pay for damages caused by its operations to growing
 crops on said lands.

Lessee shall have the right at any time to remove all machinery and
 fixtures placed on said premises, including the right to draw and
 remove casing.

If the estate of either party hereto is assigned, and the privilege or
 assigning in whole or in part is expressly allowed—the covenants
 hereof shall extend to their heirs, executors, administrators, succes-
 sors or assigns, but no change in the ownership of the land or assign-

ment of rentals or royalties shall be binding on the lessee until after the lessee has been furnished with a written transfer or assignment or a true copy thereof; and it is hereby agreed that in the event this lease shall be assigned as to a part or as to parts of the above described lands and the assignee or assignees of such part or parts shall fail or make default in the payment of the proportionate part of the rents due from him or them, such default shall not operate to defeat or affect this lease insofar as it covers a part or parts of said lands upon which the said lessee or any assignee thereof shall make due payment of said rental.

Lessor hereby warrants and agrees to defend the title to the lands described, and agrees that the lessee shall have the right at any time to redeem for lessor, by payment, any mortgages, taxes or other liens on the above described lands, in the event of default of payment by lessor, and be subrogated to the rights of the holder thereof.

IN TESTIMONY WHEREOF, we sign, this the.....day of
....., 19.....

.....(Seal)

.....(Seal)

(For acknowledgment see Form 11.)

NO. 2. CONTRACT FOR OIL AND GAS LEASE.

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of.....Dollars (\$.....), to us in hand paid by....., we hereby agree that if.....pay to us the further sum of..... Dollars within.....days from date hereof, we will, upon demand, execute and deliver to the said a lease of the oil and gas on the following described tract of land, for the purpose of operating for oil and gas, with the right to use water therefrom, and all rights and privileges necessary and convenient for said operation, and the transportation of oil, gas and water, and waive all rights to claim or hold any of the property or improvements placed or erected on the premises, which said property or improvements may be removed at any time by the lessee.

Said tract of land being situated in the County of..... and State of Oklahoma, and is described as follows, to-wit: (Here describe), containing.....acres, more or less, but no wells to be drilled within.....feet of present buildings, unless both parties consent thereto.

Said lease to be for the term of.....years, and as much longer as oil or gas is found in paying quantities thereon, upon the following rents: The.....of all petroleum or oil produced

and saved from the premises, to be delivered free of cost to our credit in pipe lines, and at the rate of.....Dollars per year for each gas well, so long as it shall produce gas in sufficient quantities to justify the lessee in marketing the same.

Said lease is given upon the condition that if a well is not completed on said premises within.....from the date hereof, then the same shall be and become null and void, unless the lessee within each and every.....after the expiration of the time above mentioned for the completion of a well, elects to and does pay to us the sum of.....Dollars, until it is completed, which payments, if the lessee elects to pay the same, may be paid directly to us or may be deposited to our credit, or in case of our death, to the credit of our estate in the.....Bank of....., and the terms of this contract and also of said lease shall be made to extend and apply to the heirs, executors, administrators and assigns of the parties respectively.

Witness our hands and seals this the.....day of.....,1922.
.....(Seal)
(For acknowledgment see Form 11.)

NO. 3. ASSIGNMENT OF OIL AND GAS LEASE.

WHEREAS, on the.....day of....., 192....., a certain oil and gas mining lease was made and entered into between Lessor and Lessee covering the following described land in the County of..... and State of....., to-wit: (Here describe land.)

Said lease being recorded in the office of the Register of Deeds in and for said County in book....., page....., and

WHEREAS, The said lease and all rights thereunder or incident thereto are now owned by.....

NOW, THEREFORE, For and in consideration of One Dollar (and other good and valuable considerations), the receipt of which is hereby acknowledged, the undersigned, the present owner..... of the said lease and all rights thereunder or incident there to, do....hereby bargain, sell, transfer, assign and convey unto..... of.....right, title and interest of the original lease and present owner....in and to the said lease and rights thereunder in so far as it covers the..... together with all personal property used or obtained in connection

therewith to.....and.....
heirs, successors and assigns.

And for the same consideration, the undersigned for.....
and.....heirs, successors, and representatives, do....
covenant with the said assignees,.....heirs, successors or assigns,
that.....the lawful owner....of the
said lease and rights and interests thereunder and of the personal
property thereon or used in connection therewith; that the under-
signed.....good right and authority to sell and convey the
same, and that said rights, interest and property are free and clear
from all lines and encumbrances, and that all rentals and royalties
due and payable thereunder have been duly paid.

IN WITNESS WHEREOF, The undersigned owner.....and assignor
.....signed and sealed this instrument this.....day of
....., 19.....

.....(Seal)

.....(Seal)

.....(Seal)

(For acknowledgment see Form 11.)

NO. 4. RELEASE OF OIL AND GAS LEASE.

WHEREAS, a certain Oil and Gas Mining Lease, dated the.....
day of....., 1922, given by.....
Lessor, to....., Lessee, and covering the
following described lands, to-wit: (Here describe lands), County of
....., and State of Oklahoma, and recorded on the
.....day of....., 1922, in
Book.....at page.....of the records of said County, and

WHEREAS, by virtue of an assignment of said Oil and Gas Mining
Lease, as above described, the same is now owned by.....
.....in so far as it covers the (Here describe lands covered
by assignment).

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That the said
.....does hereby cancel, release, relinquish
and surrender all of.....right, title and interest in and to the
said Oil and Gas Mining Lease in so far as it covers the lands last
above described.

IN WITNESS WHEREOF, ...hereunto set.....hand....and seal
this.....day of....., 1922.

.....(Seal)

.....(Seal)

(For acknowledgment see Form 11.)

NO. 5. SALE OF OIL AND GAS ROYALTY.

KNOW ALL MEN BY THESE PRESENTS: That.....
 of....., for and in consideration of the
 sum of.....Dollars, (\$.....),
 receipt of which is hereby acknowledged, ha.....granted, bargained,
 sold, conveyed and set over, and do....by these presents grant, bar-
 gain, sell, convey and set over unto.....
 heirs, successors and assigns all the following property, estate, right,
 title and interest therein, to-wit:

An undivided.....interest in all of the oil, gas, coal
 and other minerals now, or at any time hereafter, lying in or under
 the following described tract of land (or any part thereof), situated
 in the County of....., State of.....,
 described as follows, to-wit:

(Here describe lands).....
 Also an undivided.....interest in all my right, title and
 estate under and by virtue of any oil and gas mining lease, or other
 mineral lease, now or hereafter existing upon said premises, or any
 part thereof, including all rents and royalties accrued; and also
 the perpetual and irrevocable right, privilege and easement of enter-
 ing upon said lands and searching for, drilling wells, sinking shafts,
 mining digging, extracting, taking and carrying away all of the oil,
 gas coal and other minerals in or under said lands, or that may be
 found therein or thereunder; and also the right to possession and
 use of so much of said premises at all times as may be necessary to
 the practical carrying out of the purposes and provisions of this grant.

To Have and to Hold, all the aforegranted estate, property and
 easement, together with all and singular the rights, privileges and
 hereditaments thereunder belonging or appertaining, unto the said
heirs, successors and assigns, in fee
 simple forever.

And the said.....,
 for.....sel..... heirs, successors
 and personal representatives, do.....hereby covenant and
 agree to and with said.....
heirs, successors and assigns, that at the delivery
 of these presents.....lawfully seized in.....
 own right of an absolute and indefeasible estate of inheritance in fee
 simple of, in and to all and singular the aforesaid premises and
 property; that.....ha..... good right to sell and convey the
 same, and warrants the same to be free, clear, discharged and unen-
 cumbered of and from all former grants, titles, charges, judgments,

taxes, assessments and encumbrances of whatsoever kind and nature, except an oil and gas leasehold estate, hereinafter referred to, which is recorded in the office of the County Clerk of..... County, ...

It is hereby expressly declared that whereas the land, particularly described in this conveyance is understood to be subject to an oil and gas mining lease in favor of..... it is intended that said outstanding lease is fully embraced in the general terms of this conveyance, so as to pass to, and vest in said a..... interest. not only in the oil and gas, but also all rents and royalties therein reserved to the lessor, precisely as if said..... had been at the date of making of said lease, the owner in fee of a..... interest in and to the lands described, and himself one of the lessors therein.

And it is hereby further expressly declared that it is the true intent and purpose of this conveyance to pass to and vest in the said..... an undivided..... interest in all the mineral and mineral rights in the land first described herein, or that at any time may be found therein or thereunder, and all grantor's rights to operate for said minerals, and deal and contract with regard thereto, including the leasing thereof, as fully to all intent and purpose as if the said..... was the absolute owner of the entire title and estate in said lands.

IN WITNESS WHEREOF,.....ha.....set..... hand..... this..... day of, 192...
.....
.....
.....

(For acknowledgment see Form 11.)

NO. 6. ASSIGNMENT AND CONVEYANCE OF OIL AND GAS ROYALTY.

KNOW ALL MEN BY THESE PRESENTS: That..... for and in consideration of the sum of..... Dollars (\$.....), receipt of which is hereby acknowledged, ha.... assigned, transferred, sold, conveyed and set over, and do..... by these presents assign, transfer, sell, convey and set over to..... heirs, successors and assigns (hereinafter referred to as grantee), all the following described property, estate, right, title and interest, to-wit:

An undivided.....interest in all of the oil and gas now, or at any time hereafter, lying in or under the following described tract of land (or any part thereof): (Here describe lands), situated in the County of.....State of Oklahoma, and also all my rights, interest and estate under and by virtue of any oil and gas mining lease or other mineral lease now or hereafter existing upon said premises, or any part thereof, including all rents and royalties accrued and to accrue; and also all my right to the privilege or easement of entering upon said lands and searching for, drilling wells, extracting, taking and carrying away all of the oil and gas, in or under said lands, or that may be found therein or thereunder; and also all my right to possession and use of so much of said premises at all times as may be necessary to the practical carrying out of the purposes and provisions of this grant.

To HAVE AND TO HOLD, All the above assigned estate, property and easements, together with all and singular the rights, privileges and hereditaments thereunder belonging or appertaining, unto the said heirs, successors and assigns, in fee simple forever.

It is hereby expressly declared that whereas the land, particularly described in this conveyance, is understood to be subject to an oil and gas mining lease in favor of..... it is intended that such interest as assignor herein has a said outstanding lease is fully embraced in the general terms of this conveyance, so as to pass to, and vest in grantee herein..... interest, not only in the oil and gas, but also all rents and royalties therein reserved to the lessor, precisely as if grantor herein had been at the date of the making of said lease the owner in fee of..... interest in and to the lands described.

PROVIDED:

And it is hereby further expressly declared that it is the true intent and purpose of this conveyance to pass to and vest in the grantee herein, an undivided.....interest in all the oil and gas rights in the land first described herein, or that at any time be found therein or thereunder (whether described as royalty or otherwise) and all grantor's rights to operate for said minerals, and deal and contract with regard thereto.

IN WITNESS WHEREOF, the grantor....herein ha....set..... hand.....this.....day of....., 192....
.....(Seal)
.....(Seal)
.....(Seal)

No. 7. MINERAL DEED.

State of Oklahoma, County of.....

KNOW ALL MEN BY THESE PRESENTS: That.....
of.....County, Oklahoma,
 for and in consideration of the sum of.....Dollars
 (\$.....) cash in hand paid by.....
 hereinafter called Grantee...., the receipt of which is hereby acknowl-
 edged, have granted, sold, conveyed, assigned and delivered and by
 these presents do grant, sell, convey, assign and deliver unto the said
 Grantee.... an undivided.....interest in and to all of
 the oil, gas and other minerals in and under, and that may be pro-
 duced from the following described land situate in.....
 County, Okla., to-wit:

Together with the right of ingress and egress at all times for the
 purpose of mining, drilling and exploring said land for oil, gas and
 other minerals, and removing the same therefrom.

Said land being now under an oil and gas lease executed in favor of
, it is understood and agreed that this
 sale is made subject to the terms of said lease, but covers and includes
of all of the oil royalty and gas rental or royalty due
 and to be paid under the terms of said lease.

It is understood and agreed that.....of the money rentals
 which may be paid to extend the term within which a well may be
 begun under the terms of said lease is to be paid to the said Grantee..
 and in event that the above described lease for any reason becomes
 cancelled or forfeited, then and in that event an undivided.....
 of the lease interests and all future rentals on said land for oil, gas
 and other mineral privileges shall be owned by said Grantee,.....
owning.....of all oil, gas and other minerals in
 and under said lands, together with.....interests
 in all future rents.

To have and to hold the above described property together with all
 and singular the rights and appurtenances thereto in anywise belonging
 unto the said Grantee....herein,.....heirs and assigns
 forever and.....do hereby bind.....heirs,
 executors and administrators to warrant and forever defend all and
 singular the said property unto the said Grantee....herein,.....

.....heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness.....hand.....this the.....day of.....
19..... Witnesses:

.....
.....

(For acknowledgment see Form 11.)

NO. 8. DRILLING CONTRACT.

THIS AGREEMENT, made this.....day of.....
A. D., 192....., between.....of
part...of the first part, and.....
party of the second part.

WITNESSETH: That said part...of the first part hath covenanted and agreed with said party of the second part, his successors and assigns, that said part...of the first part will drill for said party of the second part a certain well for the purpose of obtaining petroleum oil or natural gas, to be known as well No.....on the farm of
.....Located in Section.....
Township.....Range.....County of
....., State of.....

The material, machinery and appliances necessary for drilling and completing said well shall be furnished, and the work of drilling the same shall be done in the manner hereinafter specified, viz.:

A complete carpenter's rig of good quality (including wooden conductor) to be furnished by the party of the second part (and all repairs on same while the well is being drilled, shall be made by and at the expense of said part...of the first part.)

All casing to be furnished by party of second part.

Boiler, engine, belt, bull rope, steam and water pipe and connections to be furnished at the well by the part...of the first part.

The expense of fitting up and connecting same to be borne by party of the first part.

Fuel to be furnished at the expense of the.....of the
.....part.

Water to be furnished at the expense of the part...of the.....
.....part.

Oil sayer and steel measuring line at expense of the part...of the first part.

All machinery, material and appliances furnished by said party of the second part shall at the completion or abandonment of said well be returned to said party of the second part in as good condition as when received by said part....of the first part, ordinary wear and action of the elements alone excepted.

The said part....of the first part further agrees to pay all expenses and furnish everything necessary to drill and complete said well except the articles and appliances herein specifically mentioned to be furnished by the party of the second part.

The said well, unless sooner abandoned by direction of the party of the second part, is to be drilled.....
the consideration for which shall be.....per foot.

All fresh water shall be cased off with casing of such diameter as may be specified by party of second part, and all salt water cased off with casing of such diameter as may be specified by party of second part.

When the said well approaches the oil or gas bearing sand, the part....of the first part shall notify the party of the second part, or its agent in charge of the farm or lease, and thereupon any further drilling and casing into or through the sand shall be as requested by the said party of the second part, or its agent, in charge of the farm or lease, but the work in connection therewith shall be done by and under the direction and at the risk of the part....of the first part.

If oil or gas is found in sufficient quantities to endanger the rig, material or equipment, part....of the first part shall assume the risk thereof and remove at.....own expense the fires and boilers to a safe distance from the well. All pipe and fittings made necessary by such removal shall be furnished by said part....of the first part.

When completed, unless prevented by too great a volume of gas or oil, the well shall be thoroughly "bailed" and "sand pumped" by said part....of the first part until all drillings and sediment are removed therefrom and the well thoroughly cleaned.

The part....of the first part shall carefully examine the rig, all machinery, casing and other appliances to be furnished for said well by the party of the second part, and if any defect be found therein sufficient to make the use of such rig, machinery, casing or other appliances unsafe, shall immediately notify the party of the second part in writing of such defect or defects, and the party of the second part shall at once replace the article so found defective with a good and safe one; but if the part....of the first part shall not make such examina-

tion, or shall not so report any defects in said rig, machinery, casing or other appliances.....shall be deemed to have assumed all risks and all responsibility for any mishap which may occur in the drilling of said well, by reason of a failure in such rig machinery, casing or other appliance.

No part of the contract price above mentioned shall in any event be paid until said well shall be completed to the depth above required, and delivered to the party of the second part, in thoroughly good order, free and clear of all obstacles.

The part....of the first part agree....to begin the drilling of the said well within.....days from.....and prosecute the work actively and continuously (Sunday excepted) to completion.

It is fully understood and agreed that none of the provisions or requirements of this contract shall be considered as waived by second party, unless the same is done in writing, and then only by the General Superintendent, or Manager of second party.

IT IS FURTHER AGREED, That time shall be the essence of this contract, and in case the part....of the first part shall neglect or discontinue the work of drilling said well for the space of five days, such neglect or discontinuance shall of itself be a forfeiture of all rights and claims of the part....of the first part under this agreement without any notice or demand by the party of the second part. The party of the second part shall have the right at any time after such forfeiture to take possession of said well, discontinue the drilling thereof and at its pleasure, dismantle or abandon the same without liability to the part....of the first part for any portion of the contract price above mentioned. The party of the second part shall also have the right at any time after such forfeiture as above mentioned, if it so elects, to take possession of said well and all ropes, tools and appliances thereat of the part....of the first part, and drill said well to completion. In case it shall succeed in completing said well, the cost of such completion without any allowance to said part....of the first part for the use of said ropes, tools and appliances, shall be deducted from the contract price above mentioned, and the balance, if any, paid to the part....of the first part; but if said party of the second part should not succeed in completing said well, it shall not be liable to the part....of the first part in any sum whatever and shall return said tools, ropes and appliances to the part....of the first part in as good order as when received, natural wear and tear and accidental loss or breakage excepted

After the drilling of the well, should the party of the second part desire to torpedo and clean out after the torpedo, the first part.... agrees to work at.....dollars per day of.....hours.

All risk and damage to tools, derrick or equipment shall be assumed by the part....of the first part at all times until all work to be done under this contract is fully and finally completed and the well is accepted as completed by the party of the second part.

IN WITNESS WHEREOF, The part....of the first part ha....hereunto set.....hand and seal and the party of the second part has caused these presents to be signed by its General Superintendent or Manager the date first above written.

Witnesses:

.....(Seal)
(Seal)
(Seal)
(Seal)

(For acknowledgment see Form 11.)

NO. 9. STIPULATION.

CHANGE OF DEPOSITORY.

KNOW ALL MEN BY THESE PRESENTS: WHEREAS, on the day of....., 19...., an Oil and Gas Lease was entered into by and between..... as Lessor and.....as Lessee covering the following described property in.....County, Oklahoma, to-wit: (Here describe.)

Which lease was filed for record in the office of the County Clerk of County, Oklahoma, in Book.....page..... which said lease provided in case a well was not..... on said land on or before a date therein specified, that certain rentals should be deposited in the.....Bank of..... Oklahoma as delay rentals to credit of Lessor above referred to or his assigns.

AND WHEREAS, under and by virtue of a conveyance of oil and gas royalty dated the.....day of.....192.... said Lessor above referred to sold and conveyed..... interest in and to their right, title and interest to the oil and gas royalty, including rentals and bonus to..... of.....

Now, THEREFORE, for and in consideration of \$1 in hand paid to receipt of which is hereby acknowledged, said.....does hereby stipulate and agree with and to said Lessee that the depository for the..... interest purchased by said.....in said delay rentals shall be changed from.....Bank as stipulated in said lease to the.....Bank, ..., which shall be and remain the depository for all rentals and royalties due and to become due said provided for in said lease and during the remainder of its term.

And.....as Lessee in the original lease or the assignee thereof does hereby stipulate and agree with and to the said.....that this change of depository shall supplement and become a part of the lease first above referred to and that said rentals will be deposited as herein provided for and failure to deposit such rentals in the.....Bank shall constitute a violation of one of the principal terms of the lease and thereupon become inoperative as to both parties herein.

Dated this.....day of.....19.....
.....
.....

(For acknowledgment see Form 11.)

NO. 10. STATEMENT OF LIEN ON OIL OR GAS WELL.

(To be filed with Court Clerk.)

State of Oklahoma,
..... County—SS.

KNOW ALL MEN BY THESE PRESENTS: That I, A. B., under a contract with C. D., as owner of the leasehold estate hereinafter described, performed labor and furnished material for (here state nature of labor performed or material furnished), and that there is now due to said contractor from said owner for such labor performed and material furnished the sum of \$....., with interest thereon at the rate of six per cent per annum from....., and that said contractor claims a lien on said leasehold estate, and on the oil and gas wells located on said leasehold estate, for the payment of said debt.

And said contractor further states that he commenced to perform such labor and furnish such materials on or about the..... day of....., 1922, and thereafter continued to perform such labor and furnish materials until the.....

day of....., 1922, when the last labor was performed and materials furnished on said contract.

That said contractor for the purpose of protecting and enforcing said lien on said real estate makes and files this statement. The amount claimed is \$....., with interest thereon at the rate of six per cent per annum from the.....day of....., 1922; that the name of the owner of said leasehold estate is C. D.; the name of the contractor is A. B., and the name of the claimant herein is A. B.; that the description of the property on which the labor was performed and material furnished is as follows: (describe property) in said County and State.

That the amount claimed and the items are set forth as nearly as practicable in the itemized statement hereto attached, marked "Exhibit A," and is made a part hereof.

That said sum is just, due and unpaid, and that the said A. B. hereby claims a lien upon said leasehold estate, and upon said materials furnished, and upon all oil and gas wells and appurtenances thereon, in the sum of \$....., with interest thereon at the rate of six per cent per annum from the.....day of....., 1922, until paid.

Dated this.....day of....., 1922.
(Signature.)

State of Oklahoma,
..... County—SS.

A. B., of lawful age, being first duly sworn, upon oath deposes and says: That he has read the above and foregoing statement of mechanic's lien and knows the contents thereof, and that the name of the owner, the name of the contractor, the name of the claimant, the description of the property upon which the lien is claimed, and the items of the account as herein set forth are just, true and correct.
(Signature.)

Subscribed and sworn to before me this.....day of....., 1922.

(Signature and title of officer.)

Approved form, see Cline v. Pattin Bros. Co. (Okla.), 156 Pac. 167.
(See Section 124 herein.)

NO. 11. ACKNOWLEDGMENTS. (a) INDIVIDUAL FORM.

State of Oklahoma,
..... County—SS.

Before me, ...(title of officer), in and for said County and State, on this.....day of.....

personally appeared.....and.....
to me known to be the identical persons who executed the within and
foregoing instrument and acknowledged to me that.....executed
the same as.....free and voluntary act and deed for the uses
and purposes therein set forth.

(Seal)

(Signature and official title.)

(Sec. 1179, Rev. Laws 1910.)

(b) BY OFFICER OF CORPORATION.

State of Oklahoma,
..... County—SS.

Before me, ...(title of officer taking
acknowledgment), in and for said County and State, on this.....
day of.....personally appeared.....
to me known to be the identical person who subscribed the name of the
maker thereof to the foregoing instrument as its (attorney in fact,
president, vice-president, or mayor, as the case may be) and acknowl-
edged to me that he executed the same as his free and voluntary act
and deed, and as the free and voluntary act and deed of such corpora-
tion, for the uses and purposes therein set forth.

(Seal)

(Signature and official title.)

(Sec. 1188, Rev. Laws 1910.)

(c) WHERE EXECUTED BY MARK.

State of Oklahoma,
..... County—SS.

Before me, ...(title of officer), in and
for said County and State, on this.....day of.....
personally appeared.....and.....
to me known to be the identical person who executed the within and
foregoing instrument by.....mark, in my presence and in the
presence of.....and.....as
witnesses, and acknowledged to me that.....executed the same as
.....free and voluntary act and deed for the uses and purposes
therein set forth.

(Seal)

(Signature and official title.)

(Sec. 1180, Rev. Laws 1910.)

Note: Every acknowledgment must be under the seal of the officer tak-
ing the same; and when taken in this State, it may be taken before any
notary public, county clerk, clerk of the district court, clerk of the county
court, or county judge. (S. L. 1913, p. 604, Sec. 1; amending Sec. 1181,
Rev. Laws 1910.)

Digest

A DIGEST OF OIL AND GAS CASES DECIDED BY THE OKLAHOMA SUPREME COURT, AND OKLAHOMA CASES DECIDED BY THE FEDERAL COURTS, INCLUDING VOLUME 82, OKLA. REPORTS, 205 PAC. REPORTER, 276 FEDERAL REPORTER, AND 252 U. S. SUPREME.

I. MINERAL LANDS.

1. Oil and gas as minerals.
2. Public mineral lands.

II. TITLES, CONVEYANCES AND CONTRACTS.

3. Nature of property in minerals.
4. Injunction against waste.
5. Sales of land with minerals.
6. Grants and reservations of minerals and mining rights.
7. Nature of mining leases and contracts.
8. Agreements for leases.
9. Requisites and validity.
10. Modification or rescission.
11. Assignment or sale of lease or reversion.
 - (1) In general.
 - (2) Measure of damages.
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12. Construction and operation of oil and gas leases.
 - (1) In general.
 - (2) Extension or renewal.
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III. OPERATION OF LEASES AND WELLS.

13. Mode of working in general.
14. Contracts for testing or working.
15. Rights and liabilities incident to working.

IV. INDIAN LANDS.

16. Power to lease Indian lands.
17. Statutory provisions.

18. Supervision by Federal Government.
19. Construction and operation of oil and gas leases.
20. Rent or royalties.

1. MINERAL LANDS.

1. Oil and Gas as Minerals.

Oil and gas are minerals, within the meaning of a reservation by deed of "all mineral rights" upon the land described in the deed. *Barker v. Campbell-Ratcliff Land Co.*, 64 Okla. 249, 167 Pac. 468, L. R. A. 1918A, 487. Note: 17 A. L. R. 162.

In the various acts of Congress dealing with the sale and leasing of land of Indians in Oklahoma, oil and gas are treated as minerals. *Leahy v. Indian Territory Illuminating Oil Co.*, 39 Okla. 312, 135 Pac. 416; *Superior O. & G. Co. v. Mehlin*, 25 Okla. 809, 108 Pac. 545, 138 Am. St. Rep. 942.

Where the granting clause of the lease uses the language "all the oil, gas, and other minerals," it must be construed to be minerals of like character. By the rule of *ejusdem generis* where general words follow the enumeration of particular classes of minerals, the general words will be construed as applicable only to minerals of the same general character or class as those enumerated. *Wolf v. Blackwell O. & G. Co.*, 77 Okla. 81, 186 Pac. 484.

2. Public Mineral Lands.

Public lands of the United States subject to settlement and occupancy, containing petroleum or other mineral oils, chiefly valuable therefor, may be entered and patent obtained thereto under the laws of the United States relating to placer mining claims. *Bay v. Oklahoma Southern Gas, Oil and Mining Co.*, 13 Okla. 425, 73 Pac. 936. Note: 7 L. R. A. (N. S.) 763.

3. Nature of Property in Minerals.

"The lease relied upon by the plaintiff does not vest in him the title to the oil and gas in said land, and is not a grant of

any estate therein, but is simply a grant of a right to prospect for oil and gas, no title vesting until such substances are reduced to possession by extracting same from the earth—an incorporated hereditament." *Kolachny v. Galbreath*, 26 Okla. 772, 110 Pac. 902, 38 L. R. A. (N. S.) 451.

The above case has been cited with approval in *Frank Oil Co. v. Belleview Gas & Oil Co.*, 29 Okla. 719, 119 Pac. 260, 43 L. R. A. (N. S.) 487; *Duff v. Keaton*, 33 Okla. 92, 124 Pac. 291, 42 L. R. A. (N. S.) 472; *In re Indian Ty. Illuminating Oil Co.*, 43 Okla. 307, 142 Pac. 997; *Hill Oil & Gas Co. v. White*, 53 Okla. 748, 157 Pac. 710; *Warner v. Page*, 59 Okla. 259, 159 Pac. 264; *Kelly v. Harris*, 62 Okla. 236, 162 Pac. 219; *Barker v. Campbell-Ratcliff Land Co.*, 64 Okla. 249, 167 Pac. 468, L. R. A. 1918A, 487; *Rich v. Doneghey*, — Okla. —, 177 Pac. 86, 3 A. L. R. 352; *Garfield Oil Co. v. Champlin*, 78 Okla. 91, 189 Pac. 514; *Woodworth v. Franklin*, 204 Pac. 452.

An oil and gas mining lease, under the laws of Oklahoma, whether a chattel real, an incorporated hereditament, or whatever termed, is nevertheless a right or interest relating to real estate, and, although not arising to the dignity of an estate prior to entry by a lessee, is "property," and as such the subject of transfer and sale. *Shaffer v. Marks*, 241 Fed. 139.

Oil and gas in the earth are, unlike ore and coal, fugacious and incapable of ownership distinct from the land, and a grant of the oil and gas in a tract of land is a grant of that part of the oil and gas therein which the grantee may find and capture, no title vests until the oil or gas is reduced to possession by extracting the same from the earth, and hence the lease is a grant of an incorporeal hereditament. *Priddy v. Thompson*, 204 Fed. 955.

Natural gas found within the territorial limits of a State is not a product which the State may conserve as a thing in which the people of the State have a common interest; but one who by lawful right reduces it to possession has the absolute right therein, with the right to transfer and sell and deliver the same

as other personal property, of which he could not be deprived without just compensation, without violating amendment fourteen of the Federal Constitution and Art. 12, Sec. 24, of the State Constitution. *Kansas Natural Gas Co. v. Haskell*, 172 Fed. 545.

The owner of land has a qualified ownership in the oil and gas beneath it, which may be termed an exclusive right, subject to legislative control against waste, etc., to explore therefor by drilling wells, and to reduce to possession and to acquire absolute title thereto as personal property. *Rich v. Doneghey*, 177 Pac. 86, 3 A. L. R. 352.

4. Injunction Against Waste.

While courts of equity will generally refuse to interfere with possession of land before the right is determined at law, yet, if defendant's possession is not exclusive, and is but an interruption of the prior, open, notorious, and peaceable possession of complainant, an injunction may be allowed, especially in cases where the entry by the defendant was for the purpose of committing waste such as the taking out of minerals. *Collier v. Bartlett (Okla.)*, 175 Pac. 247.

5. Sales of Land with Minerals.

A conveyance of land by warranty deed, without reservation therein, passes to the grantee, his heirs or assigns, "the whole interest of the grantor in the premises described," including the right to the oil and natural gas that may be found underneath the premises granted, or by drilling thereon. *Kimbley v. Lucky*, — Okla. —, 179 Pac. 928.

6. Grants and Reservations of Minerals and Mining Rights.

The right of an owner of land as to the oil and gas beneath it is the proper subject of sale, and may be granted or reserved. *Rich v. Doneghey*, 177 Pac. 86, 3 A. L. R. 352; *Ramey v. Stephney*, 173 Pac. 72.

The defendant land company conveyed the land in question to one through whom plaintiff claims, reserving in the granting clause all mineral rights upon the above-described lands, and the right to enter thereon and to use so much of the surface as may be reasonable for the purpose of extracting the mineral thereon. Held, this reservation is not repugnant to the covenants of title. Held, further, this reservation excepted from the conveyance the right of defendant land company to enter upon the land for the purposes of exploring and extracting the oil and gas. Plaintiff took the title with this exception and burdened with this right. *Barker v. Campbell-Rateliff Land Co.*, 64 Okla. 249, 167 Pac. 468, L. R. A. 1918A, 487.

An instrument in terms granting all the oil, gas, coal and asphaltum under certain described lands, but which was denominated a lease, had a definite term of 15 years, and provided, in addition to a cash payment of \$50, for the payment of a royalty on all oil produced, was construed to be a lease, and not a conveyance in fee of the minerals in place. *Moore v. Sawyer*, 167 Fed. 826.

A reservation as to an oil and gas lease in a conveyance of seventy acres of land where there was an existing oil and gas lease on but fifty acres of such land, did not apply to an oil and gas lease subsequently placed upon the remaining twenty acres. *Tilloston v. Martin*, 80 Okla. 156, 193 Pac. 975.

A land company conveyed land reserving to it, its successors and assigns, nine-tenths of all oil, gas, and mineral in and under the surface of said land for 21 years, together with a full and free right to enter upon said premises and use so much of the surface thereof as might be reasonably necessary for operating and drilling and marketing the production thereof. It thereafter by quit-claim deed conveyed to D. all its right, title, and interest in the oil and gas in and under said land for 21 years. Said quit-claim deed further recited: "This is intended to convey only nine-tenths of the oil and gas for 21 years, from March 29, 1912, which nine-tenths was reserved by the grantor. Held, that said recital did not limit the quit-

claim deed to a simple conveyance of nine-tenths of the oil and gas in and under the land, but that said quitclaim deed conveyed all of the rights of the grantor reserved in its warranty deed to nine-tenths of the oil and gas in and under said land for 21 years, including the right to enter upon the land, prospect, drill, and take therefrom said oil and gas. *Ramey v. Stepney*, — Okla. —, 173 Pac. 72.

A grant of oil and gas underlying the grantor's land to one, and his heirs and assigns forever, carries an interest in the fee. *Rich v. Doneghey*, 177 Pac. 86, 3 A. L. R. 352.

An interest of less duration than a fee may be granted in oil and gas underlying the grantor's land, and an interest for a term of years has been termed a "chattel real." *Id.*

C. purchased the interest of H. in certain oil lands and leases, in the possession and under the management of C., including cash on hand and credit due H. A check previously issued and delivered to R., a joint payee, in payment of credits due H. and R., but not delivered to H. and of which he had no actual notice, was recalled from R. and canceled, treating the amount represented by the check as cash on hand. Held, the sale included cash on hand as shown by the credits due and unpaid, delivery of the check to R. in the circumstances of this case amounted to payment, and H.'s interest in the check was not included in the sale. *Rogers v. Harris*, 76 Okla. 215, 184 Pac. 459.

Under the decisions in this State, oil and gas, while in the earth, unlike solid minerals, are not subject to ownership distinct from the soil, and the grant of the oil, therefore, is a grant not of the oil that is in the ground, but of such a part as the grantee may find. An "unless" lease is subject to termination at the will of the lessee, which privilege may be exercised by a mere failure to pay the stipulated rental at the time due, upon the happening of which the lease automatically terminates, and the lessor cannot maintain an action against the lessee for rentals. *Garfield Oil Co. v. Champlin*, 78 Okla. 91, 189 Pac. 514.

Where T. purchased land from U., and his deed thereto contains a recital excepting an oil lease to M., he takes the land burdened with the lease, and a presumption of law arises, in the absence of proof to the contrary, that the lease was taken into consideration in determining the purchase price of the land. *McKee v. Thornton*, 79 Okla. 138, 192 Pac. 212.

The time when operations under an oil and gas lease shall commence is a proper subject of agreement between the parties, and in the absence of circumstances requiring equitable intervention, one who purchases land burdened with a valid lease has no right to expect or require the lessee to begin operation or development prior to the time provided in such lease. *Id.*

7. Nature of Mining Leases and Contracts.

An agreement in the form of a lease for a certain term of years, granting the right to explore for oil and gas, is more like a license than an estate in the land. *Mitchell v. Probst*, 52 Okla. 10, 152 Pac. 597.

One who holds an enforceable contract for an oil and gas lease and for an interest in land may contract in respect thereto, and may, in effecting a settlement of his rights, enter into a contract with the grantees of those with whom he formerly contracted, reserving to himself the oil and gas beneath the lands conveyed. *Kroeger v. Martin*, — Okla. —, 180 Pac. 955.

Where in such contract the party to the former contract reserves the oil and gas for a term of 15 years, the time when operations shall commence is a proper subject of agreement between the parties, and, in the absence of imposition, fraud, or mistake, the grantees will be held to their undertaking. *Kroeger v. Martin*, — Okla. —, 180 Pac. 955.

A contract for the sale of an oil and gas lease stipulated that the mutual obligations of the parties should accrue only in case of approval of the title of the land by the attorney of

the purchaser. Held, that it is immaterial, in case of disapproval of the title by such attorney, on what grounds he objects, provided the disapproval is in good faith. *First Nat. Bank of Waurika v. Clay*, — Okla. —, 177 Pac. 115.

Where one who contracts to purchase an oil and gas lease, subject to the approval of the title of the land by his attorney, refuses afterwards to complete the purchase because the title is disapproved by such attorney, and the vendor seeks to enforce the sale, the burden is upon such vendor to prove that the vendee or his attorney acted in bad faith in rejecting the title. *First Nat. Bank of Waurika v. Clay*, — Okla. —, 177 Pac. 115.

Testimony as to the grounds upon which an attorney for a proposed vendee of an oil and gas lease bases his disapproval of title of the land submitted to him under a written contract between the vendor and the vendee, making the opinion of such attorney final as to title, is not admissible to change the written contract, but is competent as proof of a circumstance throwing light on the action of the attorney; when, however, there is no evidence introduced or offered which, in connection with the contract of the attorney, tends to prove bad faith, the rejection of testimony showing the grounds of disapproval does not constitute prejudicial error. *First Nat. Bank of Waurika v. Clay*, — Okla. —, 177 Pac. 115.

8. Agreements for Leases.

Lease for oil and gas properties considered and held that a provision therein constituted an option on the property. *Garfield Oil Co. v. Champlin*, 78 Okla. 91, 189 Pac. 514.

9. Requisites and Validity.

In an oil and gas mining lease granting to the lessee all the oil, gas, and other minerals in and under the premises leased, but excepting a portion of the lands from drilling operations, the portion so excepted or reserved must be

described with sufficient certainty as to be easy of identification. *Hennessy v. Junction Oil & Gas Co.*, 75 Okla. 220, 182 Pac. 666.

Record examined, and held, that after a careful examination of the record we are not prepared to say that the judgment rendered by the trial court is against the clear weight of the evidence. *Van Winkle v. Henkle*, 77 Okla. 34, 186 Pac. 942.

Provision in an oil and gas lease, allowing the lessee on payment of \$1 to surrender the lease for cancellation, does not render the lease unilateral, so as to give the lessor a right of cancellation. *Washburn v. Gillespie*, 261 Fed. 41.

An exploration oil lease for which bonus is paid with renewal privilege is a valid mutual contract and not subject to forfeiture. *Brunson v. Carter Oil Co.*, 263 Fed. 935.

The acknowledgment of an oil and gas lease was held not necessary to its validity between the parties. *Roach v. Junction Oil & Gas Co. (Okla.)*, 179 Pac. 934.

10. Modification or Rescission.

A lessor invoking the jurisdiction of a court of equity to cancel and rescind a lease for breach of an implied covenant must come into court with clean hands, and must act with reasonable diligence after the discovery of his right to the forfeiture on account of such breach. *Indiana Oil, Gas & Dev. Co. v. McCrory*, 42 Okla. 136, 140 Pac. 610; *Wapa Oil & Dev. Co. v. McBride (Okla.)*, 201 Pac. 984.

Pleading considered in suit to cancel lease for failure to dig well or pay rent, and answer held to constitute a defense. *Garfield Oil Co. v. Champlin*, 78 Okla. 91, 189 Pac. 514.

Petition to cancel lease held to state a cause of action, and not subject to demurrer for misjoinder. *Jackson v. Moore*. 79 Okla. 59, 191 Pac. 590.

11. Assignment or Sale of Lease or Reversion.

(1) In General.

An oil and gas lease is a chattel real. But in case of an assignment by the lessee of all his "right, title and interest" therein, where the assignee has knowledge of a prior existing lease, the general rule applicable to sales of personalty, that the act of selling is in itself an affirmation by the vendor that he is the owner, out of which arises an implied warranty of title, does not obtain. *Tupek v. Deaner*, 46 Okla. 328, 148 Pac. 853; *Moore v. White*, 75 Okla. 194, 182 Pac. 684.

An assignee of an oil and gas mining lease, which contains a stipulation to the effect that all covenants and conditions therein made shall be binding on the assignees of both parties, is liable for the rental payments prescribed in said lease so long as he retains the same. *Ardizzone v. Archer*, — Okla. —, 160 Pac. 446.

Where a person knowing of land upon which an oil and gas mining lease can be obtained, and, knowing the price at which he can obtain it, offers to sell it to another at a fixed sum, which offer is accepted by the other, and he then procures the lease, the transaction is not one of agency, and the person offering the lease occupies the position of an assignor of the lease, though the lease is made direct from the landowner to the person to whom he offered to sell it. *King v. Coombs* (Okla.), 122 Pac. 181.

Where, on the assignment of an oil and gas lease covering land subject to a prior lease which provided that it should be void unless a well was commenced within one year or unless \$160 a year should be paid in advance for delay in commencing a well, the assignor did not represent as a fact that no well had been commenced or that the payment had not been made, but merely stated that they were so informed by the lessors, and the bank in which the payment was to be deposited and the agent of the assignee had all of the information that the assignors had, there was no warranty by

the assignors with respect to the prior lease. *Eastern Oil Co. v. Holcomb*, 212 Fed. 126.

Where an oil and gas lease is made to extend to the heirs, administrators, and assigns of both lessor and lessee, and before the discovery and production of oil or gas thereon a third party purchases a portion of the leased premises, each owner is ordinarily entitled to the profits and royalties arising and accruing from the oil and gas produced on his tract, free of any claim or demand of the other. *Kimbley v. Luckey* (Okla.), 179 Pac. 928.

Note: 16 A. L. R. 588.

Where a tract of land subject to an oil and gas lease is subdivided by the owner and lessor by selling a portion thereof, the purchaser of such portion takes the same subject to such lease; and, should the lessee therein thereafter discover and produce oil or gas from the residue of the leased premises, such purchaser is not entitled to an apportionment or share of the royalties accruing from the oil and gas produced thereon. *Id.*

The words "after the completion of a well," as used in the option contract involved herein, are words of plain meaning and significance. *Uncle Sam Oil Co. v. Richards*, 76 Okla. 277, 184 Pac. 575.

Record examined, and held that, giving these words their ordinary meaning, the uncontradicted evidence shows that the well involved in this action was completed on the 28th day of November, 1912, after it had been successfully shot, and commenced flowing oil in large quantities. *Id.*

From the fact that a trust relation existed between the lessee in an oil and gas mining lease and a third person, as to one of the two tracts of land covered by the lease, at the time the lease was executed by the lessors, and some time thereafter the lessee, upon the payment to it, by the person for whose benefit the trust existed, of the bonus agreed

upon, and at his request the lessor assigned the lease to such other, covering said tract, which assignment had been treated as valid by the lessee, and the purchasers of the fee in the land covered by the lease, held, that such trust relation is not available to the purchasers of the fee as a ground for a suit for the cancellation of the lease covering the other tract. *Gypsy Oil Co. v. Cover*, 78 Okla. 158, 189 Pac. 540.

A parol agreement for the sale of lands, or of an oil and gas lease thereon, will be enforced by the courts where the vendee has paid the purchase price, and taken possession, in good faith, of the premises with the knowledge and consent of the owner, and made permanent improvements, or development thereon. *Woodworth v. Franklin*, 204 Pac. 452.

An oil and gas lease containing the usual provisions of such lease, covering a homestead, is such a grant of the use and occupancy of the homestead as requires the joint consent of both the husband and wife. *Carter Oil Co. v. Popp*, — Okla. —, 174 Pac. 747; *Francen v. Oklahoma Star Oil Co.*, 80 Okla. 103, 194 Pac. 193; *Treese v. Shoemaker*, 80 Okla. 235, 195 Pac. 766; *Chisholm v. Creek & c Dec. Co.*, 272 Fed. 589.

(2) Measure of Damages.

In a suit to cancel an oil and gas lease, the court should not decree damages where the measure thereof is uncertain, vague, and indefinite. *Indiana Oil, Gas & Dev. Co. v. McCrory*, 42 Okla. 136, 140 Pac. 610.

A person who in good faith enters into peaceable possession of land upon which he owns an oil and gas lease and produces oil and gas therefrom, and thereafter said lease is declared void or invalid, the measure of damages of the landlord in an action for an accounting for the oil and gas produced from said premises by the lessee is the value of the oil at the surface or in pipe line or tanks, wherever the same may be, less the reasonable cost of producing the same. *Barnes v. Winona Oil Co. (Okla.)*, 200 Pac. 985.

Where a corporation in good faith enters into peaceable possession of land under a valid oil and gas lease, which has been assigned to it, and under a claim of right produces oil and gas therefrom, and thereafter such assignment is declared invalid and canceled by decree of the court, the measure of damages to the original lessee in an action for an accounting for the oil and gas produced from said premises by the assignee of said lease is the value of the lessee's share of such oil and gas at the surface or in tanks or pipe line, wherever the same may be, less the reasonable cost of producing the same. *Zelina Oil Co. v. Nemo Oil Co. (Okla.)*, 203 Pac. 203.

Where a lessee in good faith takes peaceful possession of the leased premises, believing that the lessor owned the entire title in the premises, and an action is brought by another person, who establishes an interest in the premises, the measure of damages arising in favor of the party establishing a partial interest in the premises is the value of his share of the oil at the surface less the reasonable cost of production. *Minshall v. Berryhill (Okla.)*, 205 Pac. 932.

(3) **Estoppel.**

The contract providing for the payment of the sum of \$20 quarterly in advance, the check for the first payment was mailed by the lessee to the lessor on the date the payment was to be made, and, being received by the lessor on the next day, it was accepted by him. The check for the second payment was mailed by the lessee to the lessor four days before the date of payment, and, being received by him prior to said date was accepted. The third quarterly payment was not mailed to the lessor by the lessee until five days after the date provided for payment; the lessor having three days after the date of payment declared the lease forfeited on the ground of non-payment. The check was received by the lessor six days after the date of payment and returned by him. Held, that the accepting of the first payment one day after the date of payment did not estop the lessor from declaring

a forfeiture for non-payment, or operate as a waiver to insist on the conditions of the contract; the lessee obviously not so construing it as an estoppel or waiver, as he sent the second payment four days before the date required, thereby indicating a recognition of the binding force of all the terms of the contract. *Frank Oil Co. v. Belleview Gas & Oil Co.*, 29 Okla. 719, 119 Pac. 260, 43 L. R. A. (N. S.) 487.

Where a party entered into possession of a tract of land as lessee under an oil and gas lease, and during the tenancy the title of his lessor is extinguished by a valid judgment the lessee is not estopped from asserting such extinguishment in an action thereafter commenced by his lessor for the royalties agreed to be paid under the terms of the lease. *Stem v. Kemp*, 77 Okla. 101, 186 Pac. 946.

A person may waive a right by conduct or acts which indicate an intention to relinquish it, or by such failure to insist upon it that the party is estopped to afterwards set it up against his adversary. *Scott v. Signal Oil Co.*, 35 Okla. 172, 128 Pac. 694.

(4) Statute of Frauds.

An oil and gas mining lease, commonly known as an "unless lease," which provides that it shall remain in force for a term of five years from its date, and as long thereafter as oil or gas, or either of them, is produced from the land by the lessee, and which contains the clause that if no well be commenced on said land on or before the expiration of one year from the date of said lease, the same shall terminate as to both parties, unless the lessee, on or before that date shall pay, or tender to the lessor, a specified sum of money which shall operate as a rental and cover the privilege of deferring the commencement of a well for 12 months from said date, is a lease of land for a period of five years, and under the provisions of the fifth subdivision of Section 941, Rev. Laws 1910, is invalid unless in writing. *Woodworth v. Franklin* (Okla.), 204 Pac. 452.

An assignment of such a lease, to be valid, must also be in writing. *Id.*

An executory contract for the sale of such a lease is also invalid unless the contract, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, or by his agent. *Id.*

Where a parol contract for the sale of certain oil leases, unenforceable because within the statute of frauds, is executed, and the contract of sale fully performed by proper transfer of said leases, and nothing remains to be done except pay over the purchase price, the statute may not be invoked as a means of defeating a recovery. In such cases the rights of the parties are no longer affected by the statute. *Love v. Kirkbride Drilling & Oil Co.*, 37 Okla. 804, 129 Pac. 858.

The conveyance of an interest in an oil and gas lease on land is a conveyance affecting real estate within the provisions of our statute. *Bentley v. Zelma Oil Co.*, 76 Okla. 116, 184 Pac. 131.

(5) Notice.

The assignment of an oil and gas lease executed by a citizen of the Cherokee Nation prior to statehood, was not required to be recorded in order to constitute notice. *Scott v. Signal Oil Co.*, 35 Okla. 172, 128 Pac. 694.

An assignee of a second oil lease on Indian land, who took the assignment of the lease with knowledge that a prior lease was outstanding, in reliance on the records of the office of the Indian agent, which showed that the prior lease had been forwarded to the Land Department for cancellation at the request of the parties, held not a bona fide purchaser entitled to preference over the prior lease, where such prior lease was not in fact cancelled, but was approved by the Secretary of the Interior, the request for cancellation having been made through mistake, which fact would have been disclosed to the assignee

of the second lease if he had made inquiry of the parties. *Moore v. Sawyer*, 167 Fed. 826.

Any equities in favor of a lessor in an oil lease arising out of suppression of facts when the lease was made or failure to pay a bonus provided for therein, and the receipt of which was acknowledged, does not affect the validity of the lease in the hands of assigns who took it for value in good faith and without any knowledge of such facts. *Id.*

Section 2, Article 25, Williams' Ann. Const., which extended all laws in force in Oklahoma Territory to the State of Oklahoma, including the laws regulating the recordation of instruments affecting the title to real estate, did not repeal Act Cong. March 1, 1907, c. 2285, 34 Stat. 1015, which provided that the filing of any lease in the office of the United States Indian agent, Union Agency, Muskogee, Ind. T., shall be deemed constructive notice, but said Act of March 1, 1907, survived, and an oil and gas lease filed in accordance therewith is effectual to impart notice to all persons subsequently dealing with the lands therein described. *Scioto Oil Co. v. O'Hern (Okla.)*, 169 Pac. 483.

The filing of a lease of restricted lands of members of the Five Civilized Tribes for oil and gas and other mining purposes in the office of the United States Indian Agent at Muskogee, for transmission to the Secretary of the Interior for approval, constitutes notice to all parties subsequently dealing with the lands included in said lease. *Anchor Oil Co. v. Gray*, 41 Sup. Ct. 544; same case is also reported in 257 Fed. 277, 168 C. C. A. 361.

Whatever is notice enough to excite attention and put a reasonably prudent person on his guard and calls for inquiry, is notice of everything to which such inquiry might have lead, and when a person has sufficient information to lead him to a fact, he shall be deemed conversant with it. *Wapa Oil & Dev. Co. v. McBride (Okla.)*, 201 Pac. 984; *Swan v. O'Bear (Okla.)*, 167 Pac. 470.

A lessee is required as a matter of law to take notice of the extent of the claim of one in possession *Wilkinson v. Stone*, 82 Okla. 296; *Wapa Oil & Dev. Co. v. McBride*, 201 Pac. 984.

12. Construction and Operation of Oil and Gas Leases.

See *Indian Lands*, Sec. 19.

(1) In General.

A different rule of construction obtains as to oil and gas leases from that applied to ordinary leases or to other mining leases; and, owing to the peculiar nature of the mineral, and the danger of loss to the owner from drainage by surrounding wells, such leases are construed most strongly against the lessee and in favor of the lessor. Under the rules of construction, such leases are to be construed so as to promote development and prevent delay. *Superior Oil & Gas v. Mehlin*, 25 Okla. 809, 108 Pac. 545, 138 Am. St. Rep. 942; *Frank Oil Co. v. Bellevue Gas & Oil Co.*, 29 Okla. 719, 119 Pac. 260, 43 L. R. A. (N. S.), 487; *Paraffine Oil Co. v. Cruce*, 63 Okla. 95, 162 Pac. 716, 14 A. L. R. 952; *Bearman v. Dux Oil & Gas. Co.*, 64 Okla. 147, 166 Pac. 199; *New State Oil & Gas Co. v. Dunn*, 75 Okla. 141, 182 Pac. 514; *Curtis v. Harris*, 76 Okla. 226, 184 Pac. 574; *Prowant v. Sealy*, 77 Okla. 244, 187 Pac. 235; *Garfield Oil Co. v. Champlin*, 78 Okla. 91, 189 Pac. 514; *Carder v. Blackwell Oil & Gas Co.*, 201 Pac. 252; *McKinley v. Teagins*, 198 Pac. 997.

A covenant in an oil and gas lease that the lessors, in any deed hereafter executed by them, will prohibit any drilling for oil or gas on any land hereafter conveyed in a certain addition does not prohibit the lessors from leasing said tract for the purpose of drilling oil and gas wells. *Test Oil Co. v. La Tourette*, 19 Okla. 214, 91 Pac. 1025.

Where by the terms of a lease the lessor was to receive one-tenth portion from each gas well, when utilized and sold off the premises, was construed to mean one-tenth of the gross proceeds from each well when the gas was sold. *Barton v. Laclede Oil & Mining Co.*, 27 Okla. 416, 112 Pac. 965.

A condition subsequent operates upon estates already created and vested, and renders them liable to be defeated; while a condition precedent is one that must be performed before the estate can vest or be enlarged. A void condition subsequent in a lease contract cannot operate to defeat an estate already vested thereunder, but a void condition precedent prevents any estate from vesting and renders the lease void, unless the condition is performed. *Wellsville Oil Co. v. Miller*, 44 Okla. 492, 145 Pac. 344, 150 Pac. 186.

A lease which grants "all the oil and gas" under the leased land, together with the right to enter "at all times" for the purpose of "drilling and operating" to erect and maintain structures, pipe lines, and machinery necessary for the "production and transportation" of oil and gas, and to use sufficient water, oil and gas to run the necessary engines for the "prosecution of said business," which reserves to the lessor substantial royalties in kind and in money on the oil produced and saved and the gas used off the premises, which shows that the promise of these royalties was the controlling inducement to the grant, and which, while expressly requiring that drilling commence within 90 days from the date of said lease, did not expressly define the measure of diligence to be exercised in the work of development and production after the expiration of that period, contains a covenant by the lessee, arising by necessary implication from the nature of the lease and the other stipulations therein contained, that, if during the term of the lease, oil and gas, one or both, are found in paying quantities, the work of development and production shall be continued with reasonable diligence; that is, along such lines as will be reasonably calculated to make the extraction of oil and gas from the leased land of mutual advantage and profit to the lessor and lessee. *Indiana Oil, Gas & Development Co. v. McCrory*, 24 Okla. 136, 140 Pac. 610.

In pleading the performance of conditions precedent in a contract, it is sufficient to state in substance that the party

duly performed all the conditions on his part. *Cahill v. Pine Creek Coal Co.*, 40 Okla. 176, 136 Pac. 1100.

A clause in an oil and gas lease reading as follows: "Provided, however, that if a well is not drilled on said premises, within one year from the date hereof, then this lease and agreement shall be null and void, unless the party of the second part, within sixty days from the beginning of each and every year after the expiration of the term above mentioned for the drilling of a well, shall pay a rental of 25 cents per acre, until a well is drilled thereon, or until this lease is canceled, as herein provided," does not obligate the lessee to pay rent for delay in commencing to drill for oil and gas, said grant in the lease amounting only to an option to the lessee to explore for oil and gas, and preventing the lessor, after receiving the consideration for the first year, from leasing to another during such time, and after receiving a second or subsequent payment from leasing to another until such delay period had expired, the lessee having the option by continuing to pay such yearly payments to prevent the forfeiture of the lease. *Deming Inv. Co. v. Lanham*, 36 Okla. 773, 130 Pac. 260, 44 L. R. A. (N. S.) 50, and note.

The contract or lease examined, and held to be an ordinary oil and gas lease contract, and subject to the same rules of construction. It vests no right in the lessee to the real estate, nor any interest therein or right thereto, save to explore for oil, etc. *Kelly v. Harris*, 62 Okla. 236, 162 Pac. 219.

In the absence of contrary expression in the lease, a lessee in an oil and gas lease has only such rights to the surface of the leased land, and must protect the surface rights in so far as such incident necessity does not exist. *Pulaski Oil Co. v. Conner*, 62 Okla. 211, 162 Pac. 464.

Where the language of the lease was as much that of the lessee as that of the lessors, the lease will be construed most strongly against the lessee, so as to promote development and prevent delay and unproductiveness, looking to all parts of

the instrument in the light of the facts contained in the record. *Paraffine Oil Co. v. Cruce*, 63 Okla. 95, 162 Pac. 716, 14 A. L. R. 952—Note.

Where the lessor extended the time for commencing an oil and gas well, under the lease, six months after the expiration of the time originally fixed, in consideration of \$1 and of the lessee's agreement to drill first on adjoining land leased to him by the lessor's wife, the extension was valid, and founded on sufficient consideration. *Downey v. Gooch*, 240 Fed. 527.

The lessee under a valid oil and gas lease, which does not grant the lessee any estate in the oil and gas, but simply a right to prospect therefor, is nevertheless entitled to equitable relief to prevent the removal of the oil and gas by a subsequent lessee. *Id.*

An oil and gas lease of lands within a district not yet developed, where there was little likelihood of the oil being drained through wells on adjoining lands, for a term of one year, and so much longer as oil and gas were produced in paying quantities, which required the lessee to commence operations within 45 days, and to drill to a depth of 2,800 feet unless oil or gas was found in paying quantities at a less depth, is not so inequitable against the lessor as to deprive lessee of his right to injunction to restrain removal of oil and gas by a subsequent lessee, nor does an extension for six months of the time within which to commence operations render it inequitable. *Id.*

Where a cash bonus of \$130 was paid for an oil and gas lease on 130 acres of land which provided that lessee should complete a well within one year from date, or pay an annual rental of \$130, and further providing that the lessee might at any time on the payment of one dollar surrender the leased premises and terminate all future liabilities under the lease, held, that the cash bonus supported each and all the covenants of the lease, and held further that the presence of the sur-

render clause did not render the lease void for want of mutuality nor confer on the lessor the right to terminate said lease at will. *Pucini v. Bumgarner*, — Okla. —, 175 Pac. 537.

Where a cash bonus is paid for an oil and gas lease covering 160 acres, which provided that the lessee should commence the drilling of a well within 12 months from the date thereof, or pay \$100 for each additional 12 months such completion is delayed, and further provides that upon payment of \$1 the lessee shall have the right to surrender the lease for cancellation, after which all liabilities thereafter to accrue shall cease and determine, held, that such cash bonus supports each and all the covenants in the lease, and held, further, that the presence of a surrender clause in said lease did not render the same void for want of mutuality nor confer on the lessor the right to terminate said lease at will. *Carter Oil Co. v. Tiffin*, — Okla. —, 176 Pac. 912.

The owners of a tract of 60 acres of land executed an instrument, denominated an oil and gas lease, by the terms of which they granted, demised, leased, and let the same to another, his heirs, executors, administrators, and assigns, for the sole and only purpose of mining and operating for oil and gas, and of laying pipe lines, and of building tanks, power stations, and structures thereon, to procure and take care of said products. The grant was for a term of five years from date and as long thereafter as oil or gas, or either of them, was produced by said party. The instrument recited a consideration of \$1 paid by the lessee to the lessors. The lessee agreed to deliver to lessors one-eighth of the oil produced and saved from the premises; to pay certain stipulated sum per annum for each gas well, and for gas utilized from each oil well. The lessee further agreed to complete a well on said premises within six months, or pay at the rate of \$15 for each additional month such completion was delayed. The instrument contained the further provision that the lessee should have the right at any time, on payment of \$1 to the lessors, to surrender the lease for cancellation, after which all pay-

ments and liabilities thereafter to accrue under and by virtue of its terms, should cease and determine. In an action by the owners of the land to cancel the instrument and remove same as a cloud on their title, commenced prior to the expiration of the term of five years, it appearing that no well had been commenced, but that the lessee had made timely payments or tender of all sums stipulated to be paid for delay in completing a well, held, (a) that the consideration recited in the face of the instrument is sufficient to support the grant of the exclusive right to occupy the land and explore the same for oil and gas and to take and remove such as may be found therein for the entire term specified, and also the right of the lessee, on compliance with the conditions expressed, to terminate the same; (b) that the agreement is not void for the want of mutuality; (c) that, although no well had been commenced on the premises, the lessors had not the option to refuse timely tender of payments for delay in completing a well and terminate the grant, or to compel a surrender thereof; (d) that the instrument does not create a tenancy at will within the operation of the rule that an estate at the will of one party is equally at the will of the other. *Rich v. Doneghy*, — Okla. —, 177 Pac. 86.

An oil and gas lease on 80 acres of land for a term of 10 years, and as long thereafter as oil or gas is produced, executed for a cash consideration or bonus of \$2,100, and \$2,000 to be paid out of 25 per cent of the working interest of oil produced, and which provides for a royalty to the lessee of one-eighth of the oil and a stipulated sum for each gas well, the lessee agreeing to complete a well in 90 days from date, or pay at the rate of \$20 quarterly in advance for each additional three months such completion is delayed, is supported by a sufficient consideration, and is not void for want of mutuality, notwithstanding the further agreement that, upon payment of \$1 at any time after giving three months' notice, the lessee should have the right to surrender the lease for cancellation, after which all payments and liabilities thereafter to accrue

under and by virtue of its terms should cease and determine, and the grant become absolutely null and void; and such right given the lessee to terminate does not confer a corresponding right of termination upon the lessors. *Eastern Oil Co. v. Beatty*, — Okla. —, 177 Pac. 104.

S. executed an oil and gas lease covering certain lands in Lincoln County, Okla., to H. for the term of five years, for a cash consideration of \$240. The lessee agreed to pay to lessor one-eighth of the oil produced, and to pay a stipulated sum per annum for each gas well; and, further, to complete a well on said premises within 12 months from the date of the lease, or pay \$240 quarterly in advance for each year such completion was delayed. The lease contained a further provision that upon the payment of \$1 at any time to the lessor, the lessee should have the right to surrender the lease for cancellation. In an action brought by the lessor to cancel the lease for the reason that the same was unilateral and void, held, that the cash bonus paid supports each and all the covenants of the lease; that the agreement is not void for want of mutuality; that although no well had been commenced on the premises, the lessor had not the option to refuse timely tender of payments and terminate the lease. *Magnolia Petroleum Co. v. Saylor*, — Okla. —, 180 Pac. 861.

Where a cash bonus of \$1 is paid on an oil and gas lease, which provides that the lessee shall commence drilling a well within one year from the date thereof, or pay an annual rental of \$20, and further provides that the lessee might at any time upon the payment of the further sum of \$1 to the lessor surrender the lease for cancellation, and all payments and liabilities thereafter to accrue to cease and terminate, held, that the \$1 cash bonus supports each and all the covenants in the lease, and that the presence of the surrender clause therein did not render the same void for want of mutuality, nor confer on the lessor the right to terminate said lease at will. *Maud Oil & Gas Co. v. Bodkin*, 75 Okla. 6, 180 Pac. 959.

Where a lease provides for payment of money by the lessee of an oil lease, with a privilege of surrendering it on payment "of \$.....," such provision is of no effect, where the amount of the consideration to be paid was not inserted in the blank. *Riddle v. Keechi Oil & Gas Co.*, — Okla. —, 176 Pac. 737.

Where the written portion of an oil and gas lease is at variance with the printed part, the former should control and govern in the construction thereof as best indicative of the intent of the parties. *Johnston v. Shaffer*, — Okla. —, 176 Pac. 901.

In construing an oil and gas lease, where this condition exists, it is proper to look at the purposes and objects to be gained by its execution in order to ascertain the intent of the parties as expressed in the lease. *Johnston v. Shaffer*, — Okla. —, 176 Pac. 901.

Record examined, and held, that the primary purpose of the contracts by which K. reserved for 15 years the oil and gas on the lands purchased by M. and K., was not the payment to them of royalties from oil and gas to be found thereon, but to adjust the respective rights of the parties in the land, and to enable M. and K. to obtain a merchantable title to the fee. *Kroeger v. Martin*, 75 Okla. 8, 180 Pac. 955.

Where an oil and gas mining lease covers 160 acres of land, 120 acres thereof are contiguous, and the other 40-acre tract is located one-half mile therefrom, and the lessee assigns the 40-acre tract, and the assigns bring in a producing well producing oil and gas in paying quantities within the one-year period stipulated for in the lease and pays the royalties reserved to the owner of the land, which are accepted by such owner according to the terms of the lease, and the lease contains the stipulation "that this lease shall remain in full force for the term of five years from this date, and as long thereafter as oil and gas or either of them is produced therefrom by the party of the second part, successor or assigns," these

facts do not make the lease a separate lease upon each tract of land, but the same remains a lease upon the entire 160 acres, and the drilling of such well on any portion thereof and the payment of the royalties extends the life of the lease upon the entire 160 acres. *Gypsy Oil Co. v. Cover*, 78 Okla. 158, 189 Pac. 540, 11 A. L. R. 129—Note.

After gas was found upon the leased premises within five years from the date thereof in paying quantities, the lessee thereby became vested with a limited estate in the leased premises for further operations in accordance with the terms of the lease. *Id.*

(2) **Extension or Renewal.**

An oil and gas lease giving the lessee the option to pay a certain sum, and thus extend the lease, is operative against the lessor during such extension only upon the payment of such sum; contract rights being correlative and mutual. *Frank Oil Co. v. Belleview Gas & Oil Co.*, 29 Okla. 719, 119 Pac. 260, 43 L. R. A. (N. S.) 487.

Under an "unless lease," the lessee of oil lands so long as he pays the rentals in the manner provided, has an option to continue the lease in force, and it is subject to termination at his will, which privilege he may exercise by a failure to pay the stipulated rental, in which event the lease automatically terminates. The lessor has no right to terminate the lease while the lessee complies with its terms. *Northwestern Oil & Gas Co. v. Branine*, — Okla. —, 175 Pac. 533.

Under an "or lease," the payment of rentals by the lessee of oil lands, according to the lease is not necessary to keep it alive from time to time, nor does failure to pay automatically terminate the contract, as under an "unless lease." He may, however, terminate the lease at any time by exercising the right contained in the surrender clause and paying the rentals due. *Northwestern Oil & Gas Co. v. Branine*, — Okla. —, 175 Pac. 533.

Where an oil and gas lease contains a provision that it shall be operative for the period of five years from date, or so long as gas, oil, or other minerals are found thereon in paying quantities in, under, and upon said land, it is a condition precedent to the extension of lessee's right to continue operations beyond the five years that oil and gas or either of them should be found upon the premises in paying quantities within five years from the date of the lease. *Roach v. Junction Oil & Gas Co.*, — Okla. —, 179 Pac. 934.

After gas was found upon the leased premises within five years from the date thereof in paying quantities the lessee thereby became vested with a limited estate in the leased premises for further operations in accordance with the terms of the lease. *Roach v. Junction Oil & Gas Co.*, — Okla. —, 179 Pac. 934; *Parks v. Sinai Oil & Gas Co.*, — Okla. —, 201 Pac. 517.

(3) Surrender, Abandonment or Forfeiture.

Because forfeitures are usually harsh and oppressive and because they can ordinarily be enforced at law, courts of equity generally refuse to aid in their enforcement; but the rule is not absolute or inflexible. Its influence and operators do not extend beyond the reason which underlies it, and in cases otherwise cognizable in equity there is no insuperable objection to the enforcement of a forfeiture in a court of equity when that is more consonant with the principles of right, justice, and morality than to withhold equitable relief. *Indiana Oil, Gas & Development Co. v. McCrory*, 42 Okla. 136, 140 Pac. 610.

A court of equity will decree a forfeiture of an oil and gas lease on account of a breach of an implied covenant to diligently operate and develop the property when such forfeiture will effectuate justice. The granting of such relief depends upon the facts and circumstances surrounding each particular case. *Id.*

Where an oil and gas lease provided "that if a well is not drilled on said premises in one year from date hereof, then this lease and agreement shall be null and void, unless the party of the second part, within each and every year in advance after the drilling of a well, shall pay a rental of \$2.50 per acre for the first year," etc., held, that such provision amounts to an option, and gives the lessor the right to cancel unless the conditions are complied with. *Mitchell v. Probst*, 52 Okla. 10, 152 Pac. 597.

Where a party leases a tract of land for the purpose of mining and operating for oil and gas, the lessee contracting to deliver to the pipe line with which such well or wells may connect one-eighth of all oil saved from said premises, and to pay \$150 each year for the product of each gas well while the same is being used off the premises, if oil and gas are found on said premises, also paying cash in hand the sum of \$200 and agreeing to commence within 30 days from the date of said lease a well on an adjoining tract of land belonging to one Gibson and in which the lessor had no direct interest, and the lease containing the following provision: "If no well is commenced on said premises within one year from this date, then this grant shall become null and void, unless second party shall pay to the first party eighty (\$80.00) dollars for each year hereafter such completion is delayed, said rental to be paid quarterly in advance. Party of the second part further agrees to protect the lines of the land above described by immediately offsetting all wells drilled within 150 feet of said land, unavoidable delays excepted. It is further provided that this grant shall become null and void unless a well is commenced within thirty days from the date hereof on the following land belonging to Benjamin L. Gibson." Held, that this provision did not bind the lessee to pay any rent for the land or for delay in commencing to operate for oil and gas, said grant or lease, amounting to an option preventing the lessor, after receiving the consideration, for the first year, from leasing to another during such time, and after receiving a quarterly payment from leasing to another until such delay

period of a quarter had expired, the lessee having the option, by continuing to pay such quarterly payments, to continually renew such option by such succeeding payments, the word "year" being used merely as a basis to fix the amount of the quarterly payments. *Frank Oil Co. v. Belleview Gas & Oil Co.*, 29 Okla. 719, 119 Pac. 260, 43 L. R. A. (N. S.) 487.

The cash bonus of \$120 supported each and every provision in an oil and gas lease, and said lease being an indivisible contract, the cash bonus not only supported the full term of the lease, but the option of the lessee to keep the lease alive by tendering delay rentals. *Shaffer v. Marks*, 241 Fed. 139.

A voluntary surrender of an oil and gas mining lease, where the mode of effecting such surrender is prescribed, unless the consent of all parties thereto be given to a surrender in some other manner, and if such lease be that of a guardian for his ward, the consent of the county court having jurisdiction of the estate is necessary to render valid any mode of surrender other than that prescribed in the lease. *Ardizzone v. Archer*, — Okla. —, 160 Pac. 446.

Where such lease contains a clause reserving to the lessee the right at any time to remove all his property and reconvey the premises, and thereby render such lease null and void, held, that a corresponding right existed in the lessor before development to compel a surrender. *Melton v. Cherokee Oil & Gas Co.*, — Okla. —, 170 Pac. 689.

Where such lease reserves to the lessee and his assigns the right at any time after four months, on the payment of \$1 and all payable obligations then due the lessor or his assigns, to surrender the lease, if not tested, for cancellation, held that, as said lease, construed as a whole, confers on the lessee an option to complete a well within four months or pay for delay and a further option to surrender at any time after four months, and thereby avoid doing both, it was voidable at the option of the lessor at any time after four months for lack of mutuality, in that it imposed no legal obligation on

the lessee; that, as prospective royalties were the sole consideration for the execution of the lease on the part of the lessor, payment of which could be defeated by a surrender thereof by the lessee, the lease was nudum pactum; and that, as the same reserves to the lessee the right to surrender the lease at any time after four months before development, a corresponding right exists in the lessor to compel a surrender. *Brown v. Wilson*, 58 Okla. 392, 160 Pac. 94.

Where the lessor after forfeiture incurred brought suit to have the same judicially declared and to clear his title and thereafter executed a second lease on the same premises and thereafter parted with his interest as lessor in the demised premises, evidence examined, and held, that the court erred in refusing to grant such relief to him and to all parties in interest under the second lease. *Brown v. Wilson*, 58 Okla. 392, 160 Pac. 94.

Precedent conditions must be literally performed, and even a court of chancery will never vest an estate, when by reason of a condition precedent, it will not vest in law. It cannot relieve from the consequences of a condition precedent unperformed. *Paraffine Oil Co. v. Cruce*, 63 Okla. 95, 162 Pac. 716, 14 A. L. R. 952.

Where a drilling contract by the terms of which an oil company, in consideration of the assignment to it of a one-half interest in an oil and gas lease, specifically undertook to commence and with diligence drill a well on the premises into a designated sand, contained a clause providing that the failure to commence and complete such well should work a forfeiture and render the contract null and void, held, that such provision was for the benefit of the owner of the leasehold interest, and gave to him alone the option to declare a forfeiture upon failure of the company to discharge its obligation to drill, and that the company could not by virtue of such forfeiture clause, without the consent of such owner, terminate the contract by its own default, and thus escape

liability for resultant damages. *Lavery v. Mid-Continent Oil Development Co.*, 62 Okla. 206, 162 Pac. 737.

Provision in an oil and gas lease that lessee, on payment of a certain sum and accrued liabilities, might surrender premises and terminate its liability, did not authorize lessor to terminate lease at will. *Northwestern Oil & Gas Co. v. Branine*, — Okla. —, 175 Pac. 533.

Where the surrender clause in an oil and gas lease provides that such surrender clause and the option therein contained shall cease and become absolutely inoperative upon the institution of any suit by the lessee to enforce the lease or any of its terms or to recover possession of the leased lands or any part thereof, against or from the lessor, his heirs, personal representatives, or assigns, or any other person, and such condition is supported by a sufficient consideration, held, that said provision is valid and binding, and, when lessee files suit to enjoin lessor from releasing said premises and further interfering with lessee's rights under the lease, that said surrender clause becomes inoperative, and the lessee thereby becomes bound to perform the covenants of the lease and is entitled to be protected in his rights under the lease. *Pucini v. Bumgarner*, — Okla. —, 175 Pac. 537.

Provision in oil and gas lease entitling a lessee on payment of \$1 to surrender the lease for cancellation and thereby terminate all his liabilities did not permit the lessor to terminate the lease at will. *Carter Oil Co. v. Tiffin*, — Okla. —, 176 Pac. 912; *Maud Oil & Gas Co. v. Bodkin*, 75 Okla. 6, 180 Pac. 959.

Under oil and gas lease for a term, requiring the lessee to complete the well within six months or make fixed payments for each month's delay, and entitling the lessee to surrender the lease on payment of \$1, the lessor though no well has been commenced, could not refuse timely tender of monthly payments and terminate lease or compel its surrender. *Rich v. Doneghey*, — Okla. —, 177 Pac. 86, 3 A. L. R. 352.

An oil and gas lease in terms permitting the lessee to surrender did not give lessor a corresponding right of termination. *Eastern Oil Co. v. Beatty*, — Okla. —, 177 Pac. 104.

The presence of a surrender clause in an oil and gas lease does not give the lessor the right to terminate the lease where the lessee has not breached its terms. *McCray v. Miller*, 73 Okla. 16, 184 Pac. 781.

Whether or not a lessee of an oil and gas lease has abandoned a lease depends upon the facts and circumstances of the particular case. An unexplained cessation of operations may give rise to a fair presumption of abandonment and it may be that, standing alone, a court as a matter of law may declare the lease abandoned. *Strange v. Hicks*, 78 Okla. 1, 188 Pac. 347.

Where the lessee ceases operations under a lease, such cesser alone is not sufficient to establish abandonment. As to whether or not the lessee has abandoned the premises depends upon all the circumstances of the particular case. If the lessor acquiesces in the cesser of operations or fails to act in a manner indicating he considered the lease premises abandoned, he may be restrained from interfering with the lessee in removing casing, pipes, and other improvements erected by the lessee upon the premises, where the lease specifically gives the lessee the right to remove such casing, pipes, and other improvements at any time. *Bennie v. Red Star Oil Co.*, 78 Okla. 208, 190 Pac. 391.

Where, under the terms of an oil and gas mining lease, the right is reserved by the lessee to cease operations when it is found that oil or gas cannot be produced in paying quantities thereon, and the further right is reserved by the lessee to remove, at any time, the property and improvements placed or erected in or upon the leased premises, the latter had the same right to go upon the leased premises for the purpose of removing his property which he had in the first instance in going upon the property for the purpose of develop-

ing the same under the lease, provided he acts within a reasonable time. *Sanders v. Davis*, 79 Okla. 253, 192 Pac. 694.

The general rule is that a court of equity will not cancel an oil and gas lease for failure to comply with an implied covenant to drill offset wells, unless notice has been served upon lessee that a failure to protect the line within a certain time will be considered grounds for forfeiture. *Wapa Oil & Dev. Co. v. McBride* (Okla.), 201 Pac. 984.

Because of the peculiar nature of leases for the exploration and production of oil and gas, it is the duty of the lessee to use reasonable diligence to obtain production, so that the income contemplated by both parties may be obtained, and a cessation of operations, lapse of time, and notice of non-production may operate as abandonment of the lease by the lessee. *Tucker v. Canfield*, 276 Fed. 385.

In a suit to have defendants declared trustees for the benefit of an oil and gas lease subsequently executed to defendants upon the same premises on which plaintiff took a prior lease by assignment, held that the finding of the court that plaintiff has abandoned the lease, and that the lessors have accepted the surrender, was not overcome by evidence showing that when gas ceased to flow in the well drilled by plaintiff, he refused to drill any deeper, or to drill another well, and did nothing towards development under the lease for more than fifteen months, but reasserted his right under the lease when defendants drilled the well deeper and struck oil. *Tucker v. Canfield*, 276 Fed. 385.

To constitute "abandonment" in respect of property, there must be a concurrence of the intention to abandon, and an actual relinquishment of the property, so that it may be appropriated by the next comer. In determining whether one has abandoned his property rights, the intention is the first and paramount object of inquiry; for there can be no abandonment without the intention to abandon. *Blackwell Oil & Gas. Co. v. Whited*, 81 Okla. 45, 196 Pac. 688.

(4) Testing or Working.

Evidence held to support the verdict for the lessor for damages for delay by the lessee in drilling an oil well. *Cohn v. Clark*, 48 Okla. 500, 150 Pac. 467, L. R. A. 1916—B. 686.

On November 6, 1913, lessors leased a tract of land for oil and gas mining purposes to the P. company, which thereafter assigned certain interests therein to other oil companies. Section 3 fixed the term of the lease for one year, "and so long thereafter as oil or gas is produced from said land" by the lessee, "its successors or assigns, in accordance with the stipulations of 6 and 7 of this contract." After 5 obligated the lessee to begin operations for drilling in 30 days and to diligently prosecute the same until a test well was completed, ... 6 provided: "That if said territory proves productive, then the lessee to complete this contract shall drill as many as eight wells on said premises." The test well proved the territory productive January 20, 1914, and it took about 20 days to drill a well. Held, that "if" means "when," and that "then" is an adverb of time and means "at the time," and that, at the time the territory proved productive by the drilling of the test well, it was then the duty of the lessee to drill as many as eight wells upon the premises and within a year from the date of the lease as a condition precedent to the extension of the lease beyond the term of one year fixed in the lease. And, whether said wells were by the lessee drilled with due diligence and dispatch, having in view the interests of both parties to the lease, and so as to produce all the oil and gas that may be reasonably produced from the premises, as required by the lease, if available as a defense, was a question of fact; and, being found adversely to defendant, will not be disturbed, there being no evidence reasonably tending to support the finding. And there being no question that oil was found in paying quantities in the first well drilled, and there being evidence reasonably tending to support the finding of the court, in effect, that there was at its completion a profitable market

for the product of the first well, the lessee cannot escape the forfeiture of the lease, declared by the trial court, in virtue of 11 of the lease, for failure to drill as many as eight wells upon the premises within one year from the date of the lease, under the plea that there was not a profitable market at its completion for the product of the first well. *Paraffine Oil Co. v. Cruce*, 63 Okla. 95, 162 Pac. 716, 14 A. L. R. 952.

Where the object of the operations contemplated by an oil and gas lease is to obtain a benefit or profit for both lessor and lessee, neither is, in the absence of a stipulation to that effect, the arbiter of the extent to which or the diligence with which the operations shall proceed; but both are bound by the standard of what, in the circumstances, would be reasonably expected of operators of ordinary prudence, having regard to the interests of both. *Id.*

An oil and gas lease provided that the lessee should complete a well on the leased premises within three months from the date thereof or pay at the rate of \$20 for each additional three months such completion was delayed, but was silent as to the time at which such rentals should be paid. Said lease also contained a provision whereby, in consideration of \$1, the lessor waived his right to demand or declare a cancellation or a forfeiture thereof, except for the non-payment of rentals when due, and also contained a further provision which authorized the lessee, at any time, on the payment of \$1, to surrender the lease for cancellation, after which all payments and liabilities thereafter to accrue and determine shall cease. At the time the lease was executed, the parties agreed that the rentals due thereunder should be paid in advance, and in accordance with this agreement rentals were for a time paid in advance of the three months period for which they were due. Held, that, applying a strict rule of construction and adopting the construction which the parties have placed upon this agreement, the lease will be construed as requiring the rentals due thereunder to be paid in advance. *Bearman v. Dux Oil & Gas Co.*, 64 Okla. 147, 166 Pac. 199.

Where the rentals due under the terms of an oil and gas lease are payable in advance of the term for which they are due, and said lease contains a clause authorizing the lessor to declare a forfeiture thereof for non-payment of rentals when due, and where said rentals are not paid when due and a forfeiture is declared by the lessor for such non-payment all rights of the lessee are determined, and he cannot have specific performance of the lease directly or indirectly. *Id.*

Where plaintiff's lease has been declared forfeited for non-payment of rentals when due, and another lease thereafter executed to another person, upon the same premises, the plaintiff cannot take advantage of a surrender clause in the second lease authorizing the lessee therein to surrender same, as such provision is for the benefit of the lessor, and he alone can take advantage thereof and declare the lease forfeited. *Id.*

An oil and gas lease containing a stipulation on the part of the lessee to commence operation on the premises within a year from a date certain or pay for delay conferred on the lessee an option to drill or pay, and a failure to do either rendered the same forfeitable at the choice of the lessor. *Melton v. Cherokee Oil & Gas Co., — Okla. —, 170 Pac. 689.*

After oil and gas or either of them are found upon the leased premises in paying quantities, the lessees thereby acquired a vested, though limited, estate in the leased premises for the purposes named in the lease, and are entitled to be protected in the exercise of their rights according to the terms and conditions of their contract, unless the lease has been forfeited for a violation of some of its terms or has been abandoned by them. *Brennan v. Hunter, — Okla. —, 172 Pac. 49.*

Ordinarily the lessor in an oil and gas lease is the only person who can take advantage of a provision therein providing for a forfeiture thereof for failure of the lessees to comply with its terms, unless there is an express stipulation that the lease shall be void upon failure to comply with its terms. *Brennan v. Hunter, — Okla. —, 172 Pac. 49.*

The lessor is the only person who can avoid an oil and gas lease on the ground that it is rendered unilateral by reason of a surrender clause contained therein, and claim a cancellation thereof because of such surrender clause. *Brennan v. Hunter*, — Okla. —, 172 Pac. 49.

The lease in question conferred upon the lessees the right to go on its premises and search for oil and gas within the initial period, and to commence operations within that time, and continue same with reasonable diligence until it was determined whether the premises were barren, or oil and gas, or either of them, was found thereon in paying quantities, and, while the lessees acquired no vested estate in the premises, yet they had the right to the possession of the land to the extent reasonably necessary to perform the obligations imposed upon them by the terms of the lease. *Id.*

An oil and gas lease is not a grant of the oil and gas that is in the ground, but of such part thereof as the lessee may find, and passes no estate that can be the subject of an ejectment or other real action. *Brennan v. Hunter*, — Okla. —, 172 Pac. 49.

Under the decision of the United States Circuit Court of Appeals for the Eighth Circuit, in *Brewster v. Lanyon Zinc Co.*, 140 Fed. 807, 72 C. C. A. 213, decided in 1905, and the opinions of the Supreme Court of Oklahoma then handed down, an Oklahoma surrender clause oil and gas mining lease, executed in 1912 for a cash bonus of \$120, held a valid and enforceable contract, and, though the lessee had the right to decline to accept rentals made in accordance with the terms of the lease, and cancel the lease within the five-year term; it not appearing that there was any threatened drainage of the property, or any undue delay in development after becoming practicable from the standpoint of marketing facilities. *Shaffer v. Marks*, 241 Fed. 139.

A court of equity has jurisdiction to decree the forfeiture of an oil and gas lease on account of the breach of an implied

covenant to diligently operate and develop the property, when such forfeiture will effectuate justice, and the lessor is not limited to an action for damages because of such breach, where the measure thereof is uncertain, vague, and indefinite. *Blackwell Oil & Gas Co. v. Whitesides*, — Okla. —, 174 Pac. 573.

The same relief will be applied in equity for the cancellation of an oil and gas lease on land in a gas field, where the initial well drilled on the plaintiff's premises produced gas only, and the payment for the gas was the stipulated sum of \$50 per annum for each well. *Blackwell Oil & Gas Co. v. Whitesides*, — Okla. —, 174 Pac. 573.

Where a lessor in an oil and gas lease, after cause for forfeiture has accrued, fails to signify to the lessee his intention to avoid the lease in some unequivocal manner, and thereafter accepts rentals in lieu of development, such conduct on the part of the lessor amounts to a waiver of the right to declare a forfeiture. *Southwestern Oil Co. v. McDaniel*, — Okla. —, 175 Pac. 920.

Where an oil and gas lease contains an express stipulation for delay in development by the payment of rentals, held, that an implied covenant for development will not be permitted to change the agreement of the parties. *Southwestern Oil Co. v. McDaniel*, — Okla. —, 175 Pac. 920; *Same v. Hendricks*, — Okla. —, 175 Pac. 922.

Where an oil and gas mining lease dated May 14, 1912, provided that a test well should be commenced within five miles of the leased premises before September 1, 1912, and further provided that a well should be commenced on the leased premises within two years of said date, or certain agreed rentals were to be paid, held, that the time in which the well on the leased premises should be commenced or rentals paid should be computed from September 1st, and not from the date of the lease. *Southwestern Oil Co. v. McDaniel*, — Okla. —, 175 Pac. 920; *Same v. Hendricks*, — Okla. —, 175 Pac. 922.

In an oil and gas lease for a term of 10 years, and as long thereafter as oil or gas is produced, providing royalties on the oil and gas to be paid the lessor, and imposing the alternative duty on the lessee of completing a well in 90 days, or paying a sum specified in advance each additional three months such completion is delayed, there is no implied covenant for diligent operation, or operation at all, during the term of 10 years, merely because such operations may be conducted successfully and profitably to the parties. The lessor is deemed to have assented to the postponement of operations through the several periods, and bound to accept the periodical payments therefor. *Eastern Oil Co. v. Beatty*, — Okla. —, 177 Pac. 104.

Under such lease the lessor is not entitled to a decree of forfeiture or cancellation, or other relief, for drainage of the leased premises suffered by failure to drill offset wells during the portion of the term of 10 years, for which payments for delay in completing a well are made and accepted with knowledge of such drainage. *Eastern Oil Co. v. Beatty*, — Okla. —, 177 Pac. 104.

Assuming that under such lease an obligation to drill offset wells during the 10-year period for the protection of the premises against drainage from wells operated on adjacent lands can be implied, and that where the lessor demands that such wells be drilled, and declines to accept further payments for delay in completing the well, a cancellation or forfeiture of the lease may be decreed for failure of the lessee to do so in a reasonable time after such demand, such forfeiture or cancellation will not be decreed in circumstances where drilling such offset would not be reasonably expected of operators of ordinary prudence, having regard for the interests of both lessor and lessee and where the lessee makes timely tender of all payments due for delay; and especially so where it reasonably appears that such offset well would not be profitable to lessee, and where it does not reasonably appear that the value of the interests of the lessor in the oil that probably could be saved from drainage by such offset well would substantially exceed

the amount stipulated to be paid for delay in completing a well. *Eastern Oil Co. v. Beatty*, — Okla. —, 177 Pac. 104.

The phrase "oil or gas is found in paying quantities," as used in the covenant of an oil and gas lease, that "it is agreed that one well on this lease is to be drilled to the top of the Mississippi lime, unless oil or gas is found in paying quantities before that lime is reached, unavoidable accidents excepted," taken in connection with other provisions of the contract, is interpreted to mean finding oil or gas in such quantities as would justify the expectation of a reasonable profit above the entire cost, including the cost of drilling and equipping the wells. *Ardizonne v. Archer*, — Okla. —, 178 Pac. 263.

The measure of damages for the breach of an express covenant in an oil and gas lease, to drill one well to the top of the Mississippi lime, is held, under the facts and circumstances of this case, to be the reasonable cost of drilling same. *Ardizonne v. Archer*, — Okla. —, 178 Pac. 263.

Where a lessee, upon discovery of gas in paying quantities within five years from date of oil and gas lease, was vested by provisions of the lease with a limited estate for further operations, such right, once vested by discovery of gas in an upper sand, will not be lost if the lessee continues to drill deeper in search of oil or gas in a lower sand, although he does not find oil or gas in the lower sand within the limitations prescribed by the lease. But, if oil or gas be not found in the lower sand, production from the upper sand could not long be deferred without incurring the penalty of abandonment or forfeiture if forfeiture be prescribed. *Roach v. Junction Oil & Gas Co.*, — Okla. —, 179 Pac. 934.

A lessor, invoking the jurisdiction of a court of equity to cancel and rescind an oil and gas lease for breach of one of the covenants, must act with reasonable dispatch after the discovery of his rights to forfeiture on account of such breach, and if he claims delay rental and advance royalty due June 19, 1910, in the sum of \$52, but he permits the lessee to take

charge of the premises in September, 1910, and drill a gas well upon a portion of the premises covered by said lease, and permits the lessee to pay the royalty due under said lease to the owner of the portion of the land where the gas well is found, for a period of three years, and permits the premises to be sold, and the record title shows that said lease is in full force and effect, and thereafter the lessee takes possession of said portion of the premises belonging to the lessor, although over his protest, but without any proceedings, and drills three producing oil wells thereon at a cost of \$19,000, and tenders to the lessor the royalty due under said lease, said plaintiff would be guilty of laches, and a court of equity would not enforce a forfeiture for the payment of \$52 rental due June 19, 1910, especially where there is a controversy over the question of said rental being due. *Pierce Oil Corporation v. Schacht*, 75 Okla. 101, 181 Pac. 731.

An oil and gas mining lease gave the lessee, his successors or assigns, one year from date thereof to complete a well or pay at the rate of \$160 in advance for each additional 12 months such completion is delayed, providing that the completion of such well shall operate as a full liquidation of all rent during the remainder of the term of the lease, which was for five years; and where the assignee of the lessee to a portion of the leased premises completed a well upon such portion within one year, and such well continued to produce oil and gas in paying quantities, and assignees continued to operate said well and pay to the landowners the royalties reserved to them for the full term, and where the lessee neither drilled on the unassigned portion of the lease or paid delay money during the term, and some time after the term expired the landowners brought suit to quiet the title to the unassigned portion of the premises, and asked that the lease as to such portion be forfeited for failure to drill and operate and develop the same, and where, upon the trial of the cause, the court announced as his findings "that the plaintiffs are the owners of the land and went in possession of the premises at the time of taking their deed, and have retained possession since that date," and entered a

judgment in favor of the plaintiffs quieting their title to the premises and canceling the lease of the defendant, held, that from an examination of the record it clearly appeared that the plaintiffs alleged no facts or offered proof of such facts as would be sufficient to authorize the court to cancel the lease for a breach of the implied covenants to diligently operate and develop the premises, the demurrer of the defendant to the evidence of the plaintiffs should have been sustained, and that the judgment of the trial court should be reversed, and the cause remanded. *Gypsy Oil Co. v. Cover*, 78 Okla. 158, 189 Pac. 540.

Record examined and held that judgment canceling oil and gas lease is sufficiently supported by the evidence. *Wooten v. Laekey*, 79 Okla. 141, 191 Pac. 1037.

By virtue of the terms of the usual and ordinary oil and gas mining lease, the lessee is entitled to the possession of such portions of the surface of the land covered by the lease as may be reasonably necessary for the development and exploration of the leased premises under the terms of the lease. *Sanders v. Davis*, 79 Okla. 253, 192 Pac. 694.

Where the lessee under an oil and gas lease agreed to complete a well within one year, or pay at the rate of \$40 for each additional three months' completion should be delayed from the time fixed, the lease cannot be forfeited because the lessee made no effort to start drilling a well until the year had nearly expired. *Washburn v. Gillespie*, 261 Fed. 41.

A suit by a lessee under an oil and gas lease to enjoin the lessor from interfering with drilling, etc., may be maintained despite the claim that an adequate remedy at law exists; the suggested remedy of unlawful detainer, which is designed to change possession of real estate, being inadequate. *Wright v. Gellespie*, 261 Fed. 46.

In an action to quiet title for the reason the lease terminated by its own terms, and the lease provides it shall remain in full force for one year, and as long thereafter as oil or gas or

either of them is produced therefrom, and more than one year thereafter the evidence is uncontradicted that the lessee plugged the only well on said premises that had produced oil or gas, and there was no other well upon said premises from which oil or gas might be produced, held, the lease terminated by its own terms, and it was error to refuse to quiet plaintiff's title. *Anthis v. Sullivan Oil & Gas Co. (Okla.)*, 203 Pac. 187.

Under oil and gas lease for a cash bonus, one-eighth of oil produced and certain sum for each gas well, requiring lessee to complete a well within 12 months or pay certain amount quarterly until completion and under which, on payment of \$1, he might surrender lease for cancellation, the lessor had no option to refuse timely tenders of payments and terminate lease, though no well had been commenced. *Magnolia Petroleum Co. v. Saylor*, — Okla. —, 180 Pac. 861.

Where, in order to enable a purchaser to acquire a merchantable title to real property, and to effect an adjustment with the holder of his right and interest in an enforceable contract with the owners for an oil and gas lease thereon, and for the purchase of an interest in such real property, the purchaser enters into a written contract with such holder, in consideration of a release of the outstanding contract and of a quitclaim deed to the premises and other covenants and agreements then mutually entered into, whereby the holder of the original contract reserves the oil and gas appurtenant to the premises for a term of 15 years, with the privilege of entry and accompanying development rights, in the absence of special circumstances, no implied covenant exists requiring the lands to be explored and developed with reasonable diligence, as is commonly required in case of an ordinary oil and gas lease. *Kroeger v. Martin*, 75 Okla. 9, 180 Pac. 955.

Without an express covenant in an oil and gas lease to develop within a certain period, the law will imply a covenant to develop within a reasonable time in view of the surrounding circumstances, and forfeiture may be declared for failure to

so develop. *New State Oil & Gas Co. v. Dunn*, 75 Okla. 141, 182 Pac. 514.

Where an oil and gas lease for 10 years, and as much longer as oil and gas may be found in paying quantities, contains an express covenant to complete a well within 2 years, and without provision to pay for delay, failure of lessee to comply with such express covenant amounts to abandonment, and renders the lease forfeitable at the option of the lessor or his grantee. *Id.*

In an oil and gas mining lease granting to the lessee all oil, gas, and other minerals found in and under the premises leased, together with the right to enter at all times for the purpose of drilling and operating, and to erect all buildings and structures, and the exclusive right to lay all pipes and sluices necessary for the production and transportation of oil, gas, and other minerals taken from the premises, the lessor to receive one-eighth part of all oil or other minerals produced and saved from said premises, to be delivered in pipe line by the lessee, and, if gas only was found in quantities large enough to transport, then lessor to receive \$100 per year for the product of each and every well so transported, and free gas for dwelling, heating, and lighting purposes, held that, nothing appearing to the contrary, it is to be presumed that the parties had in contemplation the lessee would make a reasonable effort to produce oil, and if the lessee in good faith, honestly attempting to discover oil, but failing to find oil, should find gas in paying quantities during the life of the lease, and upon payment to the lessor of the amount stipulated for gas well, then the lease would be continued as therein provided for. *Hennesy v. Junction Oil and Gas Co.*, 75 Okla. 220, 182 Pac. 666.

Where an oil and gas lease expressly provides that rights of parties shall terminate if no well be drilled within a fixed period, unless the lessee on or before that date shall pay or tender to the lessor a fixed sum, the right to defer drilling is an option, and time is of the essence of the contract. *Curtis v. Harris*, 76 Okla. 226, 184 Pac. 574.

A court of equity will refuse to quiet title under an oil and gas lease where a well was not completed or payment tendered within a period fixed under an express provision that the lease should terminate as to both parties, unless a well was completed or payment tendered. To refuse plaintiff relief is not to declare a forfeiture, the lease having terminated by its express terms. *Id.*

An oil and gas lease executed January 4, 1916, for the term of five years, which contains the provision, "If no well be completed on said land on or before the 4th day of January, 1917, this lease shall terminate as to both parties, unless the lessee on or before that date shall pay or tender to the lessor one hundred sixty dollars which shall operate as a rental and cover the privilege of deferring the completion of a well in twelve months," gives to the lessee the option either to pay the rental or complete a well prior to January 4, 1917, and that the commencement of a well prior to January 4, 1917, is not a condition precedent; but the payment or tender of the rentals prior to January 4, 1917, will extend the lease for one year. *Garber v. Hauser*, 76 Okla. 292, 185 Pac. 436.

Evidence in this case examined, and the weight thereof held to support the judgment of the trial court. *Prowant v. Sealy*, 77 Okla. 244, 187 Pac. 235.

Under an oil and gas lease for three years and as much longer thereafter as oil or gas is found therein or said premises developed or operated, and providing that, if a well was not commenced within one year from date, the lease should become void, unless lessee paid a rental of \$2 per acre for each additional year of delay until a well was commenced, and that drilling of well thereon should liquidate all rentals due or payable during remainder of the term, drilling operations commenced within three years, and which were being prosecuted in good faith at end of term, extended term during continuance of such operations, or in case of discovery so long as oil and gas was run. *Id.*

Petition for foreclosure of lease held sufficient to sustain judgment for plaintiff. *Tidal Oil Co. v. Koelfs*, 77 Okla. 183, 187 Pac. 486.

If an oil and gas lease does not expressly provide for the operation of the lease after the discovery of either oil or gas or both, then there is an implied contract to exercise diligence under the facts and circumstances of the case to operate the same and thus making the lease remunerative to the parties to it. *Strange v. Hicks*, 78 Okla. 1, 188 Pac. 347.

Neither party to the contract is the arbiter as to whether or not due diligence has been exercised to operate an oil and gas lease. If an oil and gas lease is not operated with due diligence under the facts and circumstances of the case, then a court upon proper showing may declare the lease forfeited. *Id.*

Forfeiture of an oil and gas lease after development and discovery of oil for failure to operate is a harsh and severe remedy, and should only be declared where the same is more consonant with the principles of right and justice than to withhold such equitable relief. *Id.*

We have examined the record in this case, and find that the judgment of the trial court holding that the lease had not terminated, that the lessees had not abandoned it, and that they had not forfeited the same for failure to operate the lease, is not against the clear weight of the evidence. *Id.*

In the instant case the parties hereto on January 22, 1912, entered into an oil and gas lease, the lessees agreeing to commence operations within six months from date. Within the time fixed for operation the lessees hauled lumber and erected a derrick, and in December following placed tools upon the grounds to develop a well, and in January following commenced actual drilling, and in February following finished a well at a depth of 1,825 feet. The lessor brings this suit to cancel the lease for the reason that operation was not begun in good faith, and was not carried out with reasonable diligence. The judgment of the trial court was in favor of the lessees.

Held, that such finding is not against the clear weight of the evidence, and for that reason will not be disturbed. *Gonzales v. Cowerd*, 78 Okla. 84, 188 Pac. 1053.

Although a court of equity will decree a forfeiture of an oil and gas lease on account of a breach of an implied covenant to diligently operate and develop the property when such forfeiture will effectuate justice, the granting of such relief depends upon the facts and circumstances surrounding the particular case. *Pelham Petroleum Co. v. North*, 78 Okla. 39, 188 Pac. 1069.

A court of equity has the power to conform its decrees to the varying circumstances of each particular case, and, if the evidence shows that a part of the leased premises under an oil and gas lease have been properly developed with reasonable diligence by the lessee, and other parts have not, the court may cancel the lease as to the undeveloped portion and permit the lessee to continue to operate the developed part of it. *Id.*

Where the object of the operations contemplated by an oil and gas lease is to obtain a benefit or profit for both lessor and lessee, neither is, in the absence of a stipulation to that effect, the arbiter of the extent to which or the diligence with which the operations shall proceed; but both are bound by the standard of what, in the circumstances, would be reasonably expected of operators of ordinary prudence, having regard to the interests of both. *Id.*

A stipulation in an oil and gas lease whereby the lessee obligates itself "to protect the side lines in case oil is found in paying quantities" imposes upon the lessee the same obligation to protect the lessor's land from actual or threatened drainage that the courts universally hold to be upon it in the absence of an express stipulation to that effect. *Id.*

The provision means that the lessee is required to drill an offset well in case oil is found on adjacent lands near the boundary line of lessor's land in sufficient quantities to pay a

reasonable profit on the whole sum required to be expended, including the cost of drilling, equipping, and operating the well. *Id.*

Where an oil and gas lease expressly provides that rights of parties shall terminate if no well be drilled within a fixed period, unless the lessee on or before that date shall pay or tender to the lessor a fixed sum, time is of the essence of the contract. *Garfield Oil Co. v. Champlin*, 78 Okla. 91, 189 Pac. 515.

A court of equity may cancel a lease as to the undeveloped part thereof and permit the lessee to continue to operate the developed portion. *Carder v. Blackwell Oil & Gas Co. (Okla.)*, 201 Pac. 252.

The phrase, "oil or gas is found in paying quantities," means in sufficient quantities to pay a reasonable profit on the necessary sum required to be expended in drilling, equipping and operating a well. *Keechi Oil & Gas Co. v. Smith*, 82 Okla. 117, 198 Pac. 588.

A failure on the part of the lessee in an "unless lease" to commence the drilling of a well or to pay the rental as stipulated, automatically terminated the lease contract. *McKinlay v. Feagins*, 82 Okla. 193, 198 Pac. 997.

The phrase, "it is agreed that this lease shall remain in full force for the term of one year from this date, and as long thereafter as oil or gas or either of them is produced therefrom," is not ambiguous or susceptible of more than one construction. *Anthis v. Sullivan Oil & Gas Co. (Okla.)*, 203 Pac. 187.

(5) **Rent or Royalties.**

See Sec. 20, Indian lands.

Where the owners of a life estate and the owners of the remainder join in an oil and gas mining lease, and the lessee develops the lease and produces oil, the life tenants are entitled

either to have the royalties invested and to receive the income therefrom, or to receive such a proportion of the royalty as will amount to the present value of an annuity for the life expectancy of the life tenant equal to the interest on the royalties at 6 per cent. *Barnes v. Keys*, 36 Okla. 6, 127 Pac. 261, Ann. Cas. 1915A, 515 and note; 45 L. R. A. (N. S.) 178.

An oil lease provided that the lessee should commence operations in drilling for oil by January 1, 1910, or thereafter pay to the lessor \$1 per acre per annum until a well is drilled, or the lease thereafter was null and void. Held, that, upon a failure to begin operations by drilling for oil, the lessor was entitled to the stipulated rental until a well is drilled or until the lease is terminated, or canceled, under the surrender clause in the contract. *Cohn v. Clark*, 48 Okla. 500, 150 Pac. 467.

A provision, forfeiting a lease on failure of the lessee to fulfill the terms of the contract, is for the benefit of the lessor only, and he alone can take advantage of the same, unless there is an expressed stipulation in the contract that the lease shall become null and void, unless the lessee shall either drill within a certain time or pay the rental, or words of similar import. *Cohn v. Clark*, 48 Okla. 500, 150 Pac. 467.

Where the sum agreed to be paid for the option is not paid at the time agreed upon, nothing else appearing, the lessor has the right to cancel the lease. *Mitchell v. Probst*, 52 Okla. 382, 152 Pac. 597.

Where an oil and gas lease contract provides that the lessee shall complete a well within six months from the date thereof, or pay the lessor rental at the rate of \$20 per month for each additional month, such completion is delayed from the time sole consideration for the execution of the lease on the part such provision is for the benefit of the lessor only, and that for non-performance on the part of the lessee he may either cancel and terminate the lease, or may, if he chooses, collect the rents stipulated in the lease, until such leased premises are reconveyed, or until the term of the lease expires. *McKee v. Grimm*, 57 Okla. 680, 157 Pac. 308.

Where an oil and gas lease was made, executed, and delivered for the consideration of \$1 in hand paid the lessor, and the covenants and agreements thereafter contained on the part of the lessee, and leased and let to him a certain tract of land for a term of ten years and as long thereafter as oil and gas or either was produced therefrom the lessee, he to yield to the lessor certain royalties from the oil and gas produced, and where the lessee agreed to complete a well on the premises within four months from the date thereof or pay at the rate of \$80 in advance for each three months such completion was delayed, held, that the \$1 supported the four months' period in which the lessee had to complete a well and supported no other stipulation in the lease; that the prospective royalties were the sole consideration for the execution of the lease on the part of the lessor; that the agreements on the part of the lessee to complete a well on the demised premises within four months or pay for delay conferred an option on the lessee to drill or pay; and that a failure to do either forfeited the lease at the option of the lessor, who thereafter was entitled to have the same judicially declared forfeited and canceled as a cloud upon his title. *Brown v. Wilson*, 58 Okla. 392, 160 Pac. 94.

Where said lease as to 80 acres of the demised premises was assigned to the S. S. Co., and where on July 17, 1914, \$20 delay money fell due and payable thereon from the lessee to the lessor, assuming that the lessor and all parties in interest under the lease agreed to the substitution of said company as lessee of said 80 acres so assigned, evidence examined, and held, that said company defaulted in said payment, and that time was the essence of the contract, that the court erred in refusing to so hold and that said lease was forfeited as to the holding of said company under the lease, and to cancel the lease accordingly. *Brown v. Wilson*, 58 Okla. 392, 160 Pac. 94.

Where said lease as to 240 acres of the demised premises was assigned to W. and C., and where on April 17, 1914, \$60 delay money fell due and payable thereon from them to the lessor, evidence examined, and held, that they defaulted in said pay-

ment, that time was the essence of the contract, that the court erred in refusing to so hold, and that said lease was forfeit as to their holdings thereunder and to cancel the same accordingly. *Brown v. Wilson*, 58 Okla. 392, 160 Pac. 94.

W., the plaintiff, alleged in his petition that the defendant, G. O. Co., had been producing from each of several oil wells upon the lands of plaintiff, gas, the same being commonly spoken of as casing head gas, and had, in its own near-by plant, reduced or condensed the said gas into the form of gasoline, in which form it had been marketing the same, and for which it had received a very large sum of money, and had not accounted to plaintiff for any part thereof. The lease, under which the defendant was operating, which was attached to and made a part of the petition, contained the following provisions with reference to the payment of royalties:

“In consideration of said grant and demise, the parties of the second part agree to deliver to the party of the first part one-fourth of the oil realized from the premises, in tanks, at the well without cost. If gas is found in any well or wells on said premises the party of the first part is to have, upon demand, sufficient gas for domestic purposes free of charge, the remainder with all gas from oil wells to go to the second part (parties).

“If the parties of the second part shall market any gas from any well producing gas, then the party of the first part shall receive therefor at the rate of one-fourth of all the gas so marketed or sold.”

Held, that the petition stated a cause of action, and that the trial court erroneously sustained a demurrer thereto. *Withington v. Gypsy Oil Co.*, — Okla. —, 172 Pac. 634.

A lessee in either an “unless” or an “or” surrender clause lease, who intentionally fails to make a delay or rental payment at the time and in the manner specified in the lease, cannot escape forfeiture of the lease by tendering payment out of time. But where it is his intention to make the stipulated pay-

ment in strict accordance with the terms of the lease, but his attempt to do so is abortive because of some accident or mistake, not the result of his wilful neglect or gross negligence, a court of equity will grant him relief as against the forfeiture asserted by the lessor because of such failure, if the lessor has not suffered by the delay and it would be inequitable to enforce the forfeiture. *Shaffer v. Marks*, 241 Fed. 139.

Where the husband and wife execute an oil and gas lease as "parties of the first part, as the interest of the lessors may appear," under the terms of which the rentals are to be paid "to the parties of the first part," and which lease contains no provision defining the interests of the lessors, they are joint obligees, and payment of the rentals to the wife discharges that obligation, notwithstanding the record title to the land is in the husband. *Jens-Marie Oil Co. v. Rixse*, — Okla. —, 178 Pac. 658.

Where a lessor in an oil and gas lease, after cause for forfeiture has accrued for non-payment of rentals, fails to signify his intention to avoid the lease in some unequivocal manner, and thereafter accepts rentals in lieu of development, such conduct on the part of the lessor amounts to a waiver on his part to declare a forfeiture. *Maud Oil & Gas. Co. v. Bodkin*, 75 Okla. 6, 180 Pac. 959.

Where an oil and gas lease provides that the lessee shall complete a well on said premises within one year from the date thereof, or pay at the rate of \$20 for each additional year after such completion is delayed, and no time is fixed in the lease as to when said rental shall become due and payable, applying a strict rule of construction thereto, as against the lessee and in favor of the lessor, such rental is payable in advance at the beginning of the year for which it is to be paid. *Maud Oil & Gas Co. v. Bodkin*, 75 Okla. 6, 180 Pac. 959.

In an oil and gas mining lease, providing, if gas only is found in quantities large enough to transport, then lessor to receive \$100 for each and every well from which gas is so

transported, the lessee, acting in good faith and upon his honest judgment, not an arbitrary judgment, or one springing from an ulterior purpose to secure an unfair advantage of the lessor, is to determine whether or not the well brought in produces gas in quantities large enough to transport. *Hennessy v. Junction Oil & Gas Co.*, 75 Okla. 220, 182 Pac. 666.

A well is not an "oil well," within the meaning of a lease reserving to the lessor one-tenth of "all the oil and other minerals," merely because gasoline is produced as a by-product of the gas. *Wolf v. Blackwell Oil & Gas Co.*, 77 Okla. 81, 186 Pac. 484.

An oil and gas lease requiring quarterly payments of rental until development work was begun, but not providing for forfeiture, not making time of its essence, held not forfeited by a slight delay in making a payment through mistake. *Aggers v. Shaffer*, 256 Fed. 648.

A lessee in an "unless" oil and gas lease, which paid a substantial consideration for an option right of exploration, with right of renewal each year thereafter for five years, by paying a yearly rental in advance, and which paid the rental for the first renewal, and also for the second in due time, but through inadvertence and mistake made the second payment to the original lessor, as shown by its system of records upon which is relied for such purpose, although notified of the transfer of the land, when sued for cancellation of the lease, held entitled to equitable relief under Rev. Laws Okla. 1910, 2844, providing for relief against forfeiture or a loss in the nature of a forfeiture occurring without gross negligence or fraud. *Brunson v. Carter Oil Co.*, 259 Fed. 656.

An oil and gas lease for a term of years, but providing that if no well is commenced within one year it shall terminate unless lessee shall before the end of the year pay a rental in advance, which shall extend the time for commencing a well for another year, with the same provision as to succeeding years, under the law of Oklahoma, as settled by decision, is

simply a grant of an option to explore for oil and gas, carrying no vested interest in the real estate; but, while it gives no right *in rem*, it creates, a right *in personam* for such exploration, which, when based on a valuable consideration, may, in a proper case, be protected in equity from forfeiture. *Id.*

Where payment of first quarter's rent due under oil and gas lease was tendered before it was due, and there was no requirement in the lease for payment in advance, the lease cannot be forfeited because tender for a subsequent quarter was not made until after the quarter began. *Washburn v. Gillespie*, 261 Fed. 41.

Where a lessee under an oil and gas lease tendered payments by check, but the payments were refused, as were offers of cash, the lessor claiming he was not bound by the lease for reasons unrelated to the rental payments, further tenders were unnecessary for the lessee to protect his rights. *Wright v. Gillespie*, 261 Fed. 46.

Where an oil and gas lease expressly provides that rights of parties shall terminate if no well be drilled within a fixed period, unless the lessee on or before that date shall pay or tender to the lessor a fixed sum, time is of the essence of the contract. *Eastern Oil Co. v. Smith*, 80 Okla. 207, 195 Pac. 773.

The lessee is bound by the terms of the lease, and where the terms of the lease provide that if a well was not completed within one year from the date thereof or certain rentals paid as therein provided, the lease should terminate as to both parties. Held, the failure to complete a well or pay the rental within the time stipulated automatically terminated the lease. *Id.*

The lessee in an oil and gas lease who mailed to the bank where rental was to be deposited in a registered letter containing a check for the rental, which letter was delayed in the mails, may have relief in equity against the forfeiture. *Harvey v. Benmo Oil Co.*, 272 Fed. 475.

An "unless" lease is subject to termination at the will of the lessee, which privilege may be exercised by a mere failure to pay the stipulated rental at the time due, upon the happening of which the lease automatically terminates, and the lessor cannot maintain an action against the lessee for rentals. *Garfield Oil Co. v. Champlin*, 78 Okla. 91, 189 Pac. 514.

III. OPERATION OF LEASES AND WELLS.

13. Mode of Working in General.

For testing or working generally, see Sec. 12, subdivision 4.

Where the object of the operations contemplated by an oil and gas lease is to obtain a benefit or profit for both the lessor and lessee, neither is, in the absence of a stipulation to that effect, the arbiter of the extent to which or the diligence with which the operations shall proceed; but both are bound by the standard of what, under the circumstances, would be reasonably expected of operators of ordinary prudence, having regard to the interests of both. *Paraffine Oil Co. v. Cruce*, 63 Okla. 95, 162 Pac. 716, 14 A. L. R. 952.

14. Contracts for Testing or Working.

Where the object of the operations contemplated by an oil and gas lease is to obtain a benefit or profit for both lessor and lessee, neither is, in the absence of a stipulation to that effect, the arbiter of the extent to which, or the diligence with which, the operation shall proceed; but both are bound by the standard of what, in the circumstances, would be reasonably expected of an operator of ordinary prudence, having regard to the interest of both. *Indiana Oil, Gas & Dev. Co. v. McCrory*, 42 Okla. 136, 140 Pac. 610.

A., owning an oil lease, assigns one-tenth thereof to B. upon the consideration that B. will bear all the expense of drilling, equipping, and operating the oil wells to be drilled thereon. B. assigns to C. three-fourths of his interest in the oil lease upon the consideration that C. will bear the entire expense of

development of the oil lease therein, obligating himself to carry out the contract of B. to A. Then C. assigns a one-eighth interest in the lease to D., and in the assignment it is stated: "This assignment is and shall be binding upon the parties hereto and is subject to the terms and conditions of said lease from A. to B." Held, that D. under the terms of the contract became liable to pay only one-eighth of the expense of drilling, equipping and operating the oil wells. *Cox v. Butts*, 48 Okla. 147, 149 Pac. 1090.

A written contract for drilling oil wells provided that the driller should drill to a depth of 850 feet, unless sooner stopped by the owner, and that, should it be necessary and possible to drill said wells deeper than 850 feet, the driller so undertook the owner to pay therefor at a fixed price per foot, to such a depth as was deemed satisfactory to it, or to water. A further provision of said contract, under the heading "Payment," provided that all money should be due and payable on said drilling contract when each well was turned over to and accepted by the owner, less such sums as might have been advanced under another clause of the contract. One well was drilled to a depth of 863 feet, when a controversy over the payment arose. Neither oil nor gas had been struck, and the owner insisted upon the driller going down a greater depth, which was necessary if the prospect was to be continued. It does not appear that it was impossible to do further drilling. Payment being refused, the driller removed its rig, and brought suit to recover for the drilling done and other items claimed to be due. The court charged the jury that if they found the plaintiff had drilled a well to the depth or 850 feet, said well, under the terms of the contract, was completed, and plaintiff was entitled to recover both for drilling and reaming. Held, an erroneous construction of the contract. *Lamont Gas & Oil Co. v. Doop & Frater*, 39 Okla. 427, 135 Pac. 392.

The lessee of an oil and gas mining lease cannot select a place and there drill an oil or gas well, if the particular place selected will endanger the property and lives of other people who are

lawfully using the surface, when the lessee can drill his well at another place equally convenient to him, and equally advantageous to him, which will not endanger the property and lives of those lawfully upon the surface. *Gulf Pipe Line Co. v. Pawnee-Tulsa Petroleum Co.*, 34 Okla. 775, 127 Pac. 252, 41 L. R. A. (N. S.) 1108. Note: 68 L. R. A. 695.

Where plaintiff enters into a contract with defendant to drill an oil well to a stipulated depth at a stipulated price per foot, and plaintiff commences drilling and drills to a depth of ten feet when a dispute arises over the lease and the defendant delays drilling and requests plaintiff to remain on the lease until an adjustment of the dispute can be made, then finally stops the drilling altogether and prevents the completion of the well, an instruction which in effect defines the measure of damages which plaintiff is entitled to recover as expenses necessarily incurred in moving the rig and drilling machinery to location, necessary expenses in rigging up and drilling to the point when interrupted, and reasonable compensation for the plaintiff's loss of time in remaining on the premises at the special instance and request of the defendant, under the pleading and evidence, properly states the measure of damages which the plaintiff is entitled to recover. *Letcher v. Maloney*, — Okla. —, 172 Pac. 972.

The word "proposed" in a binding contract for the payment of \$3,000, "if a well proposed to be drilled upon certain land proves a commercial paying oil or gas well," must, in construing such contract, be defined as fixed intention on the part of the promisor fully known to the promisee at the time the contract was entered into that a well was contracted to be drilled upon the land referred to in the contract. *Gem Oil Co. v. Callendar*, — Okla. —, 173 Pac. 820.

A clause in a contract for drilling oil well, "party of the first part to have first choice on other drilling at price paid in H. Field by reliable operators," is so indefinite as to be ineffective. *Emery Bros. v. Mutual Benefit Oil Co.* — Okla. —, 175 Pac. 210.

15. Rights and Liabilities Incident to Working.

Where oil wells, drilled by defendants as trespassers on the land of complainant, pending a suit to recover possession, were operated by a receiver who used defendants' tools and machinery, the defendants were entitled to a fair compensation for the use of such tools and machinery. *Midland Oil Co. v. Turner*, 179 Fed. 74, 102 C. C. A. 368.

In an action to recover damages to a leasehold estate held under an oil and gas lease for injuries alleged to have been committed on the 11th day of November, 1915, where in the trial court over objections permitted the introduction of testimony as to the value of the lease several months prior to the date of the alleged injury, held, that the same constitutes reversible error. *Producers Supply Co. v. Maple Leaf Oil Co.*, 82 Okla. 120, 198 Pac. 577.

The measure of damages for breach of contract to drill a hole, already partially drilled, to an additional depth, is the expenditure made under such contract plus the amount necessary to complete the hole, according to the terms of the contract, above the amount agreed to be paid the contractor for the further drilling, less the amount due the drilling contractor for the work already done under the contract, provided that the completion of the original hole was stopped, delayed, or prevented by the wilful refusal to proceed, lack of ordinary care, or wanton or malicious act of the drilling contractor, and, if such lack of care makes it necessary to drill a new hole in order to reach the required depth, then the cost of such hole is an element of the amount necessary to complete a hole in accordance with the terms of the contract for such further drilling. *North Healdton Oil & Gas Co. v. Skelley*, 59 Okla. 128, 158 Pac. 1180.

A petition in an action by an oil and gas lessor for injuries to the surface rights held to state a cause of action. *Pulaski Oil Co. v. Conner*, 62 Okla. 211, 162 Pac. 464.

Where several persons and corporations owning and operating separate oil and gas leases negligently allow crude oil to escape from their respective leases into a near-by creek, where it became ignited and was carried by the wind and the natural flow of the stream upon the barn of another situated upon such stream which, together with its contents, thereby totally destroyed, they are jointly and severally liable for the wrongdoing, and the injured party may, at his option, institute an action and recover against one or all of those contributing to his injury. *Northup v. Eakes*, — Okla. —, 178 Pac. 266.

Drilling a well in search of oil or gas is not mining within the meaning of Sec. 36, Art. 9 of the Oklahoma Constitution, pertaining to common law doctrine of fellow servant. *Kreps v. Brady*, 37 Okla. 754, 133 Pac. 216, 47 L. R. A. (N. S.) 106.

Money furnished to be used in drilling an oil and gas well deposited in a bank under the terms of a drilling contract, was a loan and not a trust fund and the lender was not entitled to the money as against the contractors. *Rush Creek Oil & Gas Co. v. King*, 80 Okla. 226, 195 Pac. 784.

Where a partnership exists between two persons who are undertaking a joint venture to procure an oil and gas lease and develop the same and a third person joins in the venture with them, under an agreement that he is to have a specified interest in the lease and division of the profits, knowing the relationship which exists between the two, he thereby becomes a partner with each of the original partners in the joint venture. *Wells v. Shriver*, 81 Okla. 108, 197 Pac. 460.

Under an agreement by four parties to purchase a block of oil and gas leases, each party to own an undivided one-fourth interest in said leases, said leases being purchased for the purpose of sale and division of profits, constitute the parties to the agreement a partnership. *Cogdall v. Cottrell*, 82 Okla. 125, 198 Pac. 581.

IV. INDIAN LANDS.

16. Power to Lease Indian Lands.

An oil lease given by an allottee of the Creek Indian Nation was held valid though when executed the lessor was confined in the penitentiary and had never seen the land, and was not aware nor informed of the fact that valuable oil wells had been drilled within two miles of the property; it appearing that the terms of the lease were not inequitable nor the consideration inadequate as compared with other leases on land in the vicinity made about the same time, and in view of the approval of the contract by the Secretary of the Interior upon the report of agents who visited and examined the land. *Moore v. Sawyer*, 167 Fed. 826.

The provision of Sec. 9, c. 199, Act May 27, 1908, restricting alienation of a deceased Indian allottee's homestead for the use and support of the issue of such allottee contemplated its use only for agricultural or grazing purposes, and such other use as would not conflict with the provision against alienation of the land and does not authorize the leasing for oil and gas, for which authority is found only in Sec. 2; that where such homestead is leased by the heirs in whom the title is vested, with the Secretary's approval, the royalties so received belong to the heirs interested. *Riley v. Kelsey*, 218 Fed. 391.

Section 3 of said Allotment Act of June 28, 1906, c. 3572, 34 Stat. at L. 543, further expressly reserves to the Osage Tribe, for a period of 25 years from April 8, 1906, the oil, gas, coal, or other minerals covered by the lands for the selection and division of which provision was made and authorizes the tribal council to lease allotted lands for oil, gas and other minerals, with the approval of the Secretary of the Interior, but that nothing therein contained should affect any valid existing lease or contract. *Leahy v. Indian Territory Illuminating Oil Co.*, 39 Okla. 312, 135 Pac. 416.

By the latter proviso to the foregoing section of the allotment act, it was intended not to give to the individual allottee

the royalties arising from oil and gas wells on his or her allotment, as mentioned in Act March 3, 1905, c. 1479, 33 Stat. at L. 1048, 1061, and in the Foster lease, but to expressly recognize the rights of the holders of any valid lease or contract, and which rights were to remain in full force and unimpaired by the passage of the Act or the allotment of the tribal lands. *Leahy v. Indian Territory Illuminating Oil Co.*, 39 Okla. 312, 135 Pac. 416.

By Act. Cong. June 7, 1897, c. 3, 30 Stat. 72, the restrictions as to alienation of lands allotted members of the Quapaw Indian Tribe under Act March 2, 1895, c. 188, 28 Stat. 907, were so modified as to grant to allottees of such tribe the power to lease their allotted lands for a term not exceeding three years for farming or grazing purposes, and for a term not exceeding ten years for mining or business purposes, without the approval of the Secretary of the Interior, except in cases where the allottee by reason of age or other disability was incompetent to properly manage his allotment. *Tidwell v. Dobson*, 37 Okla. 180, 131 Pac. 693.

Where an unmarried Indian of the Five Civilized Tribes executes an oil and gas mining lease which contains no provisions for renewal, he cannot after marriage and the establishment of a homestead, execute a valid renewal or extension of such lease unless his wife should join him therein. *Chisholm v. Creek & C. Dev. Co.*, 273 Fed. 589.

17. Statutory Provisions.

The supplemental agreement with the Creeks, ratified by them on June 30, 1902 (32 Stat. 500), provides in Sec. 16 that "lands allotted to citizens shall not in any manner whatever be alienated by the allottee or his heirs" before the expiration of a certain time, except with the approval of the Secretary of the Interior. Sec. 17 provides that allottees may lease or rent their allotments under certain terms and conditions. Held, that the restriction against alienation applied to renting and leasing, and that the provision of the Act of April 21, 1904,

c. 1402, 33 Stat. 204, and that "all restrictions upon the alienation of lands of allottees of either of the Five Civilized Tribes of Indians who are not of Indian blood except minors are, except as to homesteads, thereby removed," removed all restrictions as to leasing by allottees within its scope. *Moore v. Sawyer*, 167 Fed. 826.

By the seventh paragraph of Section 2 of Act June 28, 1906, c. 3572, 34 Stat. at L. 539, known generally as the Osage Allotment Act, it is expressly provided that the oil, gas, coal, or other minerals on allotted lands should be reserved to the use of the tribe for a period of 25 years, at the expiration of which time, unless otherwise provided by Act of Congress, the same should become the property of the individual owner. *Leahy v. Indian Territory Illuminating Oil Co.*, 39 Okla. 312, 135 Pac. 416.

Under the provisions of paragraph 7 of Section 2 of said Act (Act June 28, 1906, c. 3572, 34 Stat. 540), adult members of the Osage Tribe, to whom certificates of competency were issued by the Secretary of the Interior, could sell and convey, manage, control, and dispose of their surplus allotted lands, but could not sell the oil, gas, coal, or other mineral covered by said lands. *Neilson v. Alberty*, 36 Okla. 490, 129 Pac. 847.

Under the Act of Congress of March 3, 1905, c. 1479, 33 Stat. 1061, the approval of the Secretary of the Interior was not necessary to the validity of a mortgage of an oil and gas lease in the Osage Nation. *Davis v. Moffet*, 43 Okla. 171, 144 Pac. 607.

Act Congress, March 3, 1905, c. 1479, 33 Stat. 1060, making appropriations for the expenses of the Indian Department, and for fulfilling treaty stipulations with the Indian Tribes, required the approval of all guardian's leases to allotted lands of minor members of the Five Civilized Tribes; such approval to be by the United States Court having jurisdiction of the guardianship proceedings, and without which no guardian's

lease should be valid or enforceable. *Walker v. McKemie* (Okla.), 145 Pac. 359.

An assignment of royalty due under the mining lease given by a Quapaw Indian on his allotment is valid under Act March 2, 1895, c. 188, 28 Stat. 907, as modified by Act June 7, 1897, c. 3, 30 Stat. 72. Following *Wat-Tah-Noh-Zhe v. Moore*, 129 Pac. 877. *Tidwell v. Dobson*, 37 Okla. 180, 131 Pac. 693.

Act March 1, 1907, declaring the filing in the office of the United States Indian agent, Union Agency, Muskogee, Indian Territory, of a lease of an allotment of Indian land, to be constructive notice, especially in view of it being a special act, is not repealed, annulled, or modified by admission of Oklahoma to the Union, by the recordation statutes of the territory or State (Rev. Laws Okla. 1910, Sections 1154, 1155), by the Enabling Act, the Constitution, or the Schedule of the Constitution of that State. *Anchor Oil Co. v. Gray*, 257 Fed. 277.

18. Supervision by Federal Government.

Filing of departmental leases as constructive notice, see Sec. 11, subdivision 5.

The filing of a copy of an oil and gas lease executed by an Indian at the Indian agency, as required by the rules of the Interior Department, is merely for administrative purposes, and does not charge a subsequent purchaser of the land with constructive notice of such lease. *Shulthis v. McDougal*, 170 F. 529, 95 C. C. A. 615.

A lease executed by an Indian giving the lessee the right for 15 years to explore for and extract oil and gas must, under Mansf. Deg., Section 671, be recorded to be valid against a subsequent purchaser without notice, although the lease had not been approved by the Secretary of the Interior as required by law. *Shulthis v. McDougal*, 170 F. 529, 95 C. C. A. 615.

The allotment deed, issued to plaintiff by express provision, reserves to the Osage tribe of Indians, for a period of 25 years

from and after April 8, 1906, all oil, gas, coal, and other minerals covered by the lands allotted to her. *Leahy v. Indian Territory Illuminating Oil Co.*, 39 Okla. 312, 135 Pac. 416.

It is lawful for Congress, acting as *patriae* of a minor Creek Indian, and whose allotment contains restrictions against alienation, to enact a law conferring upon the Secretary of the Interior authority to grant a right-of-way in the nature of an easement for the construction, operation, and maintenance of pipe lines for the conveyance of oil and gas through such allotment, upon such terms and for such compensation as may be fixed; due consideration at all times being had for the interest of the minor allottee. *Texas Co. v. Henry*, 34 Okla. 342, 126 Pac. 224.

Occupying the position that the federal government does in its guardianship over the Creek Indians, and its obligation to protect them in their property and personal rights, it cannot be said that Act March 11, 1904, pursuant to which an allottee, through her legal guardian, received \$892.50 cash for a 20-year easement on 11.9 acres of land, was not in the interest of or beneficial to such allottee, but, instead, was wholly in the interest of companies engaged in piping oil and gas through the Indian Territory, though such Act was primarily for the benefit of such companies. *Texas Co. v. Henery*, 34 Okla. 342, 126 Pac. 224.

Where an Indian minor, after reaching majority, re-dated, re-executed and extended a mining lease on his allotment, the Government had no right to sue to set it aside. *United States v. Wright*, 197 Fed. 297.

Leases of allotments of Indian minors in the Five Civilized Tribes confirmed and approved by the trial court in that jurisdiction since April 26, 1906, are not subject to the approval or disapproval of the Secretary of the Interior; but the orders of the court confirming and approving them are final. *Cowles v. Lee*, 35 Okla. 159, 128 Pac. 688.

An allottee of the Cherokee Tribe of Indians prior to the removal of his restrictions executed a mining lease upon his allotment subject to the approval of the Secretary of the Interior. After the lease had been submitted and while pending before the Secretary of the Interior, lessor's restrictions on alienation of his lands were removed, and he then protested against the approval of the lease, which was denied and the lease approved. On suit brought to cancel the same as a cloud upon the title to the land involved, it was held by the trial court that the lease was invalid. Held, error. *Almeda Oil Co. v. Kelley*, 35 Okla. 525, 130 Pac. 931.

Where the petition discloses that the Secretary of the Interior disapproved a lease and afterwards approved the same on condition that plaintiff, pursuant to its agreement, assign to defendant a portion of the leased property, held that, as the petition fails to disclose that the Secretary acted through gross and fraudulent mistake of facts, a demurrer thereto was properly sustained. *Indiahoma Oil Co. v. Thompson Oil & Gas Co.*, 38 Okla. 140, 132 Pac. 481.

Under Act Cong. March 3, 1905, c. 1479, 33 Stat. 1061, the approval of the Secretary of Interior was not necessary to the validity of a mortgage of an oil and gas lease in the Osage Nation. *Ashcraft v. Moffett* (Okla.), 144 Pac. 1041.

Where an original lease of Indian mineral lands was signed by both lessor and lessees, but renewals and extensions were signed by the lessor only, and the lessees accepted the extensions and caused them to be recorded, the Government acting for the lessor could not have the extensions set aside under the statute of frauds. *United States v. Wright*, 197 Fed. 297.

A contract by which a lessee in an Indian oil and gas lease parted with the management and control of operations thereunder to another, who was to conduct such operations at his own expense and risk and to have a beneficial interest in the production, is a transfer of an interest in the lease, within the regulations prescribed by the Secretary of the Interior and

embodied in such lease, providing that no sub-lease, assignment or transfer thereof, or of any interest therein, could be made without the written consent of the lessor and the Secretary first obtained, and without such consent the contract is void. *Barnsdall v. Owen*, 200 Fed. 519.

(a) The Act of Congress of May 27, 1908 (35 Stat. L. 312, c. 199), does not confer on the Secretary of the Interior the right to enter into a lease contract affecting the restricted lands of a minor Indian. (b) That right rests solely in the guardian. (c) The only actual authority of the Secretary in such cases is, either to approve the lease contract as made by the guardian, or to withhold his approval. *Crosbie v. Brewer*, — Okla. —, 158 Pac. 388.

C. & W. entered into a contract with the guardian of a minor for an oil lease upon the restricted lands of said minor. Pending the action of the Secretary of the Interior thereon, the lessees could not voluntarily withdraw therefrom without the consent of said guardian, unless notified by the said Secretary, or his agent, that the terms of his contract were rejected. *Crosbie v. Brewer*, — Okla. —, 158 Pac. 388.

The approval of the Secretary of the Interior to leases of restricted lands of members of the Five Civilized Tribes for oil and gas and other mining purposes may be given at any time either before or after the death of the lessor, so far as the rights of heirs and those claiming under them with notice were concerned and the approval when given related back and takes effect as of the execution of the lease by the parties named therein. *Anchor Oil Co. v. Gray*, 41 Sup. Ct. 544.

A departmental oil and gas lease, which provides, if the lessee fails to comply with any of the terms thereof, that the lessor may declare the lease forfeited upon giving 10 days' notice. The notice is not complied with by the lessor notifying the lessee that he had declared the lease forfeited, but in order to comply with said provision in said lease it is necessary to notify the lessee of the terms of the lease that have been

violated, and provide, if the same is not complied with within ten days, then the lease will be considered forfeited. *Pierce Oil Corporation v. Schacht*, 75 Okla. 101, 181 Pac. 731. Note: 16 A. L. R. 588.

Act Congress May 27, 1918, c. 199, 35 Stat. 312, authorizes the guardians of Indian minors to make certain lease contracts, subject to the approval of the Secretary of the Interior. Held that, where a guardian, under proper probation procedure, made a lease contract under the provisions of this Act, which was duly approved by the Secretary of the Interior, the lessee was bound by such contract. *Crosbie v. Brewer*, — Okla. —, 173 Pac. 441.

Section 2 of the Act of Congress of May 27, 1908, c. 199, 35 Stat. 312, provides: "That all lands other than homesteads allotted to members of the Five Civilized Tribes from which restrictions have not been removed may be leased by the allottee, if an adult, or by guardian or curator under order of the proper probate court, if a minor or incompetent, for a period not to exceed five years, without the privilege of renewal: Provided, that leases of restricted lands for oil, gas or other mining purposes, leases of restricted homesteads for more than one year, and leases of restricted land for periods of more than five years, may be made, with the approval of the Secretary of the Interior, under rules and regulations provided by the Secretary of the Interior, and not "otherwise." Held, that under this section, where a full-blood Choctaw Indian had valid existing leases on his surplus and homestead allotments, which did not expire until the 31st day of December, 1911, additional leases made and dated on the 5th day of September, 1911, leasing his surplus lands for a period of five years, commencing on the 1st day of January, 1912, and his homestead allotment for a period of one year, commencing on the same day, without the approval of the Secretary of the Interior, are in contravention of this act, and therefore void. *Mullen v. Carter*, — Okla. —, 173 Pac. 512.

Under Act of April 26, 1906, c. 1876, § 20, and Act of May 27, 1908, c. 199, § 2, oil and gas leases of lands of Creek Indians were held without validity unless approved by the Secretary of the Interior. *Anicker v. Gunsberg*, 246 U. S. 110, 38 S. Ct. 1228.

Under Act of April 26, 1906, c. 1876, § 20, and Act of May 27, 1908, c. 199, § 2, approval of oil and gas lease of lands of Indian is in the discretion of the Secretary of the Interior, and he may consider the advantages and disadvantages of the lease and grant or withhold approval as his judgment may dictate. *Id.*

The Secretary of the Interior is not deprived of authority to exercise discretion respecting approval of Indian leases by giving reasons which might not in all respects meet with approval. *Id.*

Supervisory authority of Secretary of Interior over royalties under oil lease of full-blood Indian allottee's land, made under Act May 27, 1908, § 2, continues after death of allottee leaving a full-blood Indian heir; it naturally falling to him, under Rev. St. §§ 441, 463 (Comp. St. §§ 681, 716), in the absence of some provision to the contrary, and none such appearing in the leasing provision, or in the proviso to 9, Act May 27, 1908, as to sale of the land by the heir with approval of the court. *Parker v. Richard*, 250 U. S. 235, 39 S. C. Rep. 442.

Within provision of an oil lease, given on land of a full-blood Creek allottee with approval of Secretary of the Interior, under authority of Act May 27, 1908, § 2, that supervision of the lease by the Secretary should cease in the event of restriction on alienation of the land being removed, such restriction, continuing up to allottee's death, was not thereby removed, but only qualified, his heir being a full-blood Indian; provision of § 9, that death of an allottee shall remove all restriction on alienation of his land being controlled by the proviso that no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having juris-

diction of settlement of the deceased allottee's estate. *Parker v. Richard*, 39 S. C. Rep. 442.

An oil and gas mining lease executed February 11, 1915, by a full-blood heir of a deceased Creek Indian allottee, is a "conveyance of an interest" in said lands, and is void unless approved as required by § 9, Act Cong. May 27, 1908, c. 199, 35 Stat. 315. *Hoyt v. Fixico*, — Okla. —, 175 Pac. 517.

The district courts of this State have jurisdiction to foreclose a mortgage on the interest of the lessee in an oil and gas lease on Indian land in the Osage Nation while the land is held in trust by the United States, such action in no wise affecting the title of the Indian owners, and not contemplating an invasion of the province of the Secretary of the Interior to approve or disapprove any transfer of the lease, in case of transfer pursuant to a foreclosure sale. *McKee v. Interstate Oil & Gas. Co.*, 77 Okla. 260, 188 Pac. 109.

Lease of allottee of the Five Indian Tribes of his lands, when approved after his death by the Secretary of the Interior, relates back to and takes effect as of the date of its execution, except as against any persons without notice, though it provides its term shall be from approval by the Secretary. *Anchor Oil Co. v. Gray*, 257 Fed. 277.

The authority of the Secretary of the Interior, under Act April 26, 1906, § 20, to approve and thereby to validate a lease by a full-blood Creek Indian allottee of his or her allotment continues after his or her death. *Anchor Oil Co. v. Gray*, 257 Fed. 277.

The term "restriction," as used in the proviso of Act May 27, 1908, § 4, prohibiting allotted lands from being subject, or held liable, to any form of personal claim or demand against the allottees, arising or existing prior to the removal of restrictions, other than contracts heretofore expressly permitted by law, comprehends a limitation operating on minors, so that such minors may not convey allotted or inherited tribal land

without the intervention of the proper State court exercising probate jurisdiction, and on the agencies of the State, so that such land may not be liable to personal claims or demands arising prior to majority, other than by contracts permitted by Act of Congress, as well as restrictions removed by §§ 1 and 9, or thereafter removed in accordance therewith. *Rogers v. Rogers*, 263 Fed. 160.

The second proviso in Act May 27, 1908, § 2, prescribing a federal limitation or restriction as to ages of Indian minors, § 6, subjecting the property of minor's allottees to the jurisdiction of the probate court of Oklahoma, and the proviso of § 4, prohibiting allotted lands from being subjected or held liable to any form of personal claim or demand against the allottees arising or existing prior to removal of restrictions, other than contracts heretofore expressly permitted by law, constitute a limitation or restriction, but not to the extent of making inherited allotted lands "restricted lands," as the term is used in the first proviso of § 2. *Id.*

Under Act May 27, 1908, § 9, on the death of an Indian allottee of three-fourths Indian blood, leaving a homestead and children born since March 4, 1906, the homestead remains inalienable for the support of such children during their lives until April 26, 1931, and where the land is under oil lease the royalties accruing therefrom constitute a fund, the income from which is to be devoted to that purpose until the termination of such special right, when the principal, like the land, is to be divided among the general heirs; their guardian, appointed by the State probate court, not being entitled to the custody of such royalties without the consent of the Secretary of the Interior. *Id.*

The guardian, appointed by the State probate court for minor heirs of a deceased allottee of surplus lands, both decedent and heirs being of three-fourths Indian blood, held entitled to receive the royalties accruing to such heirs from oil leases, and to hold and account for the same, subject to the right of the

Secretary of the Interior, through regulations prescribed by him, to cause execution of the trust as the law directs. *Id.*

19. Construction and Operation of Oil and Gas Leases.

See Sec. 12, subdivision 1.

An oil and gas lease executed by an Indian landlord to a corporation tenant, subject to the approval of the Secretary of the Interior, was approved, conditioned upon the lessee and its sureties executing certain documents containing conditions and terms which the lessee rejected. Held, that such conditional approval was a new proposal, which, when not accepted by the lessee, resulted in a failure of any contract; and delay of action on the part of the lessee did not result in creating one. *Davis v. Selby Oil & Gas. Co.*, 35 Okla. 254, 128 P. 1083.

The term "cultivated inclosure" in the clause of the mining lease made by the Osage Nation on March 16, 1896, to Foster, which prohibits boring wells on the Osage Indian reservation for oil and gas on such inclosures, includes those made after as well as those which were in existence at the date of the lease. *Barnsdall Oil Co. v. Leahy*, 195 Fed. 731.

An oil and gas lease is an "alienation" of lands, within the meaning of the "Original Agreement" (Act. March 1, 1901, c. 675, 31 Stat. 849), section 7, and, where made of the homestead of a deceased citizen by blood of the Creek Nation, by her heir before the expiration of five years from the ratification of that agreement, is void. *Barnes v. Stonebraker*, 28 Okla. 75, 113 Pac. 903.

The sale of an option to purchase the land, contained in an oil and gas lease of the homestead of a deceased citizen by blood of the Creek Nation, made by her heir before the expiration of five years from the ratification of the "Original Agreement" (Act March 1, 1901, c. 675, 31 Stat. 848) is void under said Act and section 16 of an Act approved June 30, 1902, c. 1323, 32 Stat. 503), and will not be specifically enforced. *Barnes v. Stonebraker*, 28 Okla. 75, 113 Pac. 903.

An oil and gas mining lease is an "alienation of lands," within the meaning of an Act of Congress approved April 21, 1904 (Act April 21, 1904, c. 1402, 33 Stat. 204), providing that "all restrictions upon the alienation of lands of all allottees of either of the Five Civilized Tribes of Indians who are not of Indian blood, except as to minors are, except as to homesteads, hereby removed." *Sharp v. Lancaster*, 23 Okla. 349, 100 Pac. 578.

A lease is an "alienation of lands" within the intent and meaning of Act April 21, 1904, c. 1402, 33 Stat. 204. *Eldred v. Okmulgee Loan & Trust Co.*, 22 Okla. 742, 98 Pac. 929.

A departmental oil and gas lease of a citizen of the Cherokee Nation contained the provision that the lessee should drill at least one well within 12 months, and that, on failure to do so on notice and proof of default, the Secretary of the Interior at his discretion might declare the same null and void, and the further provision that the lessee agreed that the indenture should in all respects be subject to the rules and regulations theretofore prescribed by the Secretary relative to oil and gas leases in the Cherokee Nation. Prior to the approval of the said lease, the Secretary of the Interior prescribed a rule providing that lessees, on making certain payments, should have the privilege of delay or operation for a period not to exceed five years. Held, that the same regulation was a valid exercise of authority by the said Secretary of the Interior, became a part of the lease, and was binding on both parties. *Dixon v. Owen*, 38 Okla. 85, 132 Pac. 351.

In the year 1907, upon the petition of the guardian of a minor full-blood allottee, the United States Court for the Northern District of the Indian Territory, sitting in equity, made an order directing the minor to join in executing an oil and gas mining lease upon the ward's allotment upon condition that the lease should be approved by the Secretary of the Interior. Held, that this condition requiring the approval of the Secretary of the Interior was a condition precedent in the lease contract, and no estate vested thereunder until this condition

was performed, although the condition may have been void. *Wellsville Oil Co. v. Miller* (Okla.), 145 Pac. 344, 150 Pac. 186.

The approval of a guardian's lease being necessary to its validity or enforceability, such lease was not fully executed within the meaning of the Act of June 28, 1898, until its approval by the court as provided by the Act of March 3, 1905. *Walker v. McKemie* (Okla.), 145 Pac. 359.

Act May 27, 1908, c. 199, 35 Stat. 312, authorizes the leasing of allotments of minor Indians of the Five Civilized Tribes by their guardians under order of the proper probate court of the State, but provides that the jurisdiction of such courts shall be subject to the provisions of the Act. It also defines minors as including "all males under the age of 21 years." Held, that a district court of the State, acting under a State statute, cannot confer majority on an Indian allottee under the age of 21 years so as to qualify him to lease or otherwise transfer his allotment. *Truskett v. Closser*, 198 Fed. 835.

Act. Cong. March 2, 1895, c. 188, 28 Stat. 907, provided that allotments to Quapaw Indians in Oklahoma should be inalienable for 25 years from and after the patent; but act June 7, 1897, c. 3, 30 Stat. 72, providing that such allottees might lease their lands for a term not exceeding 3 years for farming or grazing purposes, or 10 years for mining and business purposes. Held, that where an allottee had leased her allotment for 10 years for mining purposes, such act did not prevent the mutual cancellation of such lease before the expiration of the term and the making of a new one to the same parties for another term not exceeding 10 years. *United States v. Abrams*, 194 Fed. 82.

A departmental oil and gas lease was executed by a citizen of the Cherokee Nation to S., who thereafter assigned the same with the approval of the Secretary of the Interior, but without the consent of the lessor, to the Signal Oil Company, who immediately entered into possession of the leased premises and in due time, after the expenditure of a considerable sum of

money, developed a producing gas well. The lessor was duly notified of the assignment of said lease and the approval thereof by the Secretary of the Interior and thereafter accepted without question the rentals and royalties due her by the terms of said lease for a period of several years. Held, that the lessor by her conduct waived her rights under the clause of the lease which provides: "And it is mutually understood and agreed that no sublease, assignment or transfer of this lease, or of any interest therein or thereunder, can be directly or indirectly made without the written consent thereto of the lessor and the Secretary of the Interior first had and obtained, and any such assignment or transfer made or attempted without such consent shall be void." *Scott v. Signal Oil Co.*, 35 Okla. 172, 128 Pac. 694.

The provisions of Section 3 of Article 1 of the State Constitution, that "the people inhabiting the State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public lands shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States," do not prevent the State courts from exercising jurisdiction over controversies as to the possession and ownership of lands within the limits of Indian tribes, after the land has been allotted, although it may be necessary for the State court to construe acts of Congress, treaties with the Indian Tribe, and departmental leases and conveyances, and said courts have jurisdiction over a controversy as to possession between the owner of said land and a sublessee of the land for oil and gas mining purposes, although the oil and gas did not pass by the allotment, and though the original lease required that royalties be paid to the tribe. *Kohlmeyer v. Wolvering Oil Co.*, 37 Okla. 477, 132 Pac. 497.

In payment of the bonus for an oil lease upon the restricted lands of an Indian minor, the lessees gave a certified check

therefor to the guardian, payable upon the approval of said lease by the Secretary of the Interior within sixty days. This check was sent to the Indian Superintendent, who, upon its receipt, wrote the lessees that in order for the lease to receive favorable consideration they were required to pay the cash into his office. In reply thereto, the lessee wrote to said superintendent that they desired the application for the lease be disapproved and the check returned to them. Held, this communication of the superintendent was in effect notice of the refusal to approve the lease contract and a rejection of the same under its then terms, and that the lessees were thereby given the privilege of withdrawing from said contract, and, after so notifying the superintendent to that effect, were no longer bound thereby. *Crosbie v. Brewer*, — Okla. —, 158 Pac. 388.

In a suit to set aside an oil and gas mining lease for fraud in its procurement, and while plaintiff was a minor, in violation of Act May 27, 1908, where the enrollment records fail to disclose the date of enrollment of plaintiff, but the undisputed parol evidence shows him to have been born February 8, 1890, and hence was a minor on August 24, 1909, the date of the execution of the lease, evidence examined, and held, that the court was right in finding there was no fraud in its procurement, but that aside from the question of fraud, the lease was in violation of the act, and not voidable, but void. *Gilcrease v. McCullough*, 63 Okla. 24, 162 Pac. 178.

Where a minor citizen of the Creek Nation of one-eighth Indian blood during his minority executes a lease upon his allotment, without the intervention of the county court, and void as in contravention of Act May 27, 1908, and after attaining his majority, with fraud in its procurement, and for a valuable consideration, executes another lease on the same land to the same party and others interested in the prior lease for a like term, held, that the subsequent lease is good, and that the court did not err in refusing to set the same aside. *Gilcrease v. McCullough*, 63 Okla. 24, 162 Pac. 178.

Where C., a full-blood Creek citizen, executed an oil and gas lease upon his allotted land which lease was filed in the office of the United States Indian agent, Union Agency, at Muskogee, and C. died before its approval by the Secretary of the Interior, and the heirs of C. thereafter conveyed said lands by deed duly approved by the county court, after which said lease was approved by the Secretary of the Interior, held, that the approval related back to the date of the lease, and the grantors in the deeds by the heirs of C. take title subject to said lease. *Scioto Oil Co. v. O'Hern*, — Okla. —, 169 Pac. 483.

Act April 26, 1906, c. 1876-20, 34 Stat. 145, provides that all leases of full-blood Creek allottees shall be subject to approval by the Secretary of the Interior, and void without such approval, and that leases for more than one year shall be recorded under the recording law in force in the Indian Territory. Act May 27, 1908, c. 199-2, 35 Stat. 312, provides that leases of restricted lands for oil and gas purposes may be made with the approval of the Secretary under rules approved by him. Act March 1, 1907, c. 2285, 34 Stat. 1026, provides that the filing of any lease in the office of the Indian agent at Muskogee, Ind. Ter., shall be deemed constructive notice. A rule of the department declared that all leases should be filed by the lessor within thirty days from execution with the Indian agent at Muskogee. A full-blood Creek on March 20, 1912, executed an oil and gas lease, which was filed April 5th, within thirty days, and on March 28th executed another lease, filed March 30th. Held, that the filing was limited to giving notice to parties dealing with the property, and had no bearing on the Secretary's discretion, and that the Secretary's approval of the first executed lease established its priority. *Anicker v. Gunsberg*, 226 Fed. 176.

Under Act March 3, 1905, c. 1479, 33 Stat. 1060, providing that no lease of allotted lands in the Indian Territory made by any guardian shall be valid without the approval of the court having jurisdiction of the proceedings, a lease of the

oil and gas rights in such lands, made by a guardian and approved by the Secretary of the Interior under the provisions of Act July 1, 1902, c. 1375-72, 32 Stat. 726, but not by any court, is void. *Robinson v. Long Gas Co.*, 221 Fed. 398.

An oil and gas lease, executed by the guardian of an Indian minor in Oklahoma and approved by the proper probate court, is valid for its term although the minor reaches majority before its expiration, and gives the lessee the right of possession, although the land is at the time in possession of another, claiming under a void deed from the minor. *Etchen v. Cheney*, 235 Fed. 104.

Such lease was an alienation of the oil and gas taken from the land by the lessor, and the approval thereof by the Secretary of the Interior was a removal of restrictions on such alienation. *Parker v. Riley*, 243 Fed. 42.

Act May 27, 1908, c. 199-1, 35 Stat. 312, provides that homesteads of allottees enrolled as mixed-blood Indians having half or more than half Indian blood, and all allotted lands of enrolled full-bloods and mixed-bloods of three-fourths or more Indian blood shall not be subject to alienation prior to April 26, 1931, except that the Secretary of the Interior may remove such restrictions wholly or in part. Section 2 authorizes leases of restricted lands for oil, gas, or other mining purposes with the approval of the Secretary of the Interior. Sec. 9 provides that, if any member of the Five Civilized Tribes shall die leaving issue born since March 4, 1906, the homestead of the allottee shall remain inalienable for the use and support of such issue during their lives until April 26, 1931, unless restrictions against alienation are removed by the Secretary of Interior in the manner provided in Section 1. Held that, where an allottee died leaving a child born since March 4, 1906, and other heirs, the subsequent approval by the Secretary of the Interior of an oil and gas lease by the heirs removed the restrictions on alienation from the leasehold and the royalties thereunder, without a removal of the restrictions or alienation

being first procured under Section 1. *Parker v. Riley*, 243 Fed. 42.

Act June 7, 1897, c. 3, 30 Stat. 72, authorized allottees of land within the limits of the Quapaw Agency, Indian Territory, to lease their land "for a term not exceeding—ten years for mining or business purposes." An allottee subject to such act executed an oil and mining lease for ten years, with a further provision that, should oil or other mineral of value be found in paying quantities, the privilege of operating should continue so long as such substances could be produced in paying quantities, "on such terms and conditions as parties hereto have agreed upon after the expiration of this lease." Held, that the lease was divisible, and that the invalidity of the provision for an extension did not effect its validity for the ten-year term which was within the statute. *McCullough v. Smith*, 243 Fed. 823.

In 1912 a Creek minor of the full blood, through his guardian, and with the approval of the Secretary of the Interior, executed an oil and gas lease on his allotment, which was subject to restrictions upon alienation. The lease provided for the payment of royalties to the Indian superintendent for the benefit of the lessor, and under the regulations of the department to which the lease was subject the superintendent was authorized to withhold payment of such royalties until it was considered for the interest of the minor or his heirs that they should be paid over. The lease further provided that, in event restrictions on alienation should be removed, it should be released from the supervision of the Secretary, and royalties should be paid to the lessor, or the then owner of the land. The lessor died while still a minor, leaving his father as his sole heir. A large sum in royalties had previously been paid to the superintendent, and other royalties were thereafter paid to him. Act May 27, 1908, c. 199-9, 35 Stat. 315, provides that "the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land. Provided

that no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee." Held that, under such statute, the effect of the death of the lessor was to terminate all control over the land and of the lease by the Secretary, and also over the royalties previously collected. *Richard v. Parker*, 245 Fed. 330.

The conferring of the rights of majority, conformably to a State statute, upon a minor Indian allottee so as to qualify him to make a lease must be deemed to be beyond the power of an Oklahoma district court, notwithstanding the removal of restrictions on alienation by Indian allottees, made by the Act of May 27, 1908 (35 Stat. at L. 312, chap. 199), Sections 1 and 4, in view of the provisions of Sections 2 and 6 of that Act defining "minors," and specifically providing for the leasing of their allotments by their guardians under the order of the State probate courts, which are given, subject to the provisions of that Act, jurisdiction of the person and property of minor allottees, "except as otherwise specifically provided by law," especially since a contrary view would conflict with the rulings of the highest State court, which have become a rule of property. *Truskett v. Closser*, 236 U. S. 223, 59 L. Ed. 549.

The authority granted to Quapaw Indian allottees by the provision of the Act of June 7, 1897 (30 Stat. at L. 62, chap. 3), modifying the general restrictions on alienation made by the Act of March 2, 1895 (28 Stat. at L. 876, chap. 188), to lease their lands for a term not exceeding ten years for mining or business purposes, does not empower such an allottee to make a ten-year mining lease subject to a valid existing ten-year mining lease of the same property, which still has several years to run. *U. S. v. Noble*, 237 U. S. 74, 59 L. Ed. 844.

Allegations in a bill filed by the lessee of an oil and gas mining lease from the heirs of an Indian homestead allottee for the recovery of possession from a subsequent lessee of the

same premises, and for an injunction restraining the assertion of any rights under such lease, and any interference with plaintiffs' rights under their lease, that plaintiffs' lease, though not approved by the Secretary of the Interior, was valid, and that the subsequent lease to defendant, which had such approval, was void, because, by the Act of May 27, 1908 (35 Stat. at L. 312, chap. 199), the land descended to the heirs of the Indian allottee free from any restrictions against leasing the same for oil and mining purposes, and because if that Act did impose restrictions as to such a lease, it was repugnant to the Federal Constitution—were material to the cause of action stated in the bill, and therefore present a cause of action within the jurisdiction of a Federal district court as a Federal court. *Lancaster v. Kathleen Oil Co.*, 241 U. S. 550, 60 L. Ed. 1161.

Restriction on alienation by allottee of the Five Civilized Tribes of his land never being removed, provision in his lease as to what happens in that event never becomes effective. *Anchor Oil Co. v. Gray*, 257 Fed. 277.

Under a cancellation provision of a full-blood oil and gas lease, payment of the cancellation fee of \$1 and expression of intention to cancel does not constitute a cancellation, unless within the period of cancellation the provisions relating to delivery of recorded releases and to surrender of parts of leases be complied with; and such provisions are held not to be unreasonable requirements. *Massachusetts Bonding & Ins. Co. v. Lewis*, 80 Okla. 187, 195 Pac. 494.

The contention that the condition precedent of approval by the Secretary of the Interior of a lease of an Indian allotment for oil and gas purposes, which was imposed by the court authorizing such lease, was retracted when that court approved the executed lease before it had been presented to the Secretary, when it was reported to the court by the guardian of the Indian allottee, in conformity with previous directions to that effect, is plainly without merit, where the report of the lease and its approval by the court were merely

prerequisite and preliminary steps to the submission of the lease to the Secretary for his action, in order that the condition precedent which the court had established might be brought into play, and where every condition of the lease makes it manifest that it was drawn with reference to the power of the Secretary to approve or disapprove it, and that its execution was subject to all the conditions, limitations, and restrictions resulting from that situation, and where the petition in the suit to uphold the validity of the lease alleges in express terms that the Secretary asserted the power to approve, and that the court, in giving the authority, acquiesced in such assertion of authority as a prerequisite. *Wellsville Oil Co. v. Miller*, 243 U. S. 6, 61 L. Ed. 559.

Failure to give effect to a lease of an Indian allotment for oil and gas purposes is not a denial of full faith and credit to the order of the United States court of the Indian Territory, authorizing such lease, where the approval of the Secretary of the Interior, made a condition precedent by that court to the exercise of such authority, was never obtained. *Wellsville Oil Co. v. Miller*, 243 U. S. 6, 61 L. Ed. 559.

20. Rent or Royalties.

See Sec. 12, Subdiv. (5).

A departmental oil and gas lease upon 160 acres of land which has been approved by the Department of Interior, and thereafter the lessor has divided said land into subdivisions to different parties, after the restrictions are removed, the lessee enters into a written contract with the owners of the premises that the depository for the payment of the oil and gas rentals and royalties is changed from the place provided in said lease to places designated by the different land owners. This fact does not make the lease a separate lease upon each tract of land, but the same remains a lease upon the entire tract of land, and the drilling of a gas well upon any portion thereof and the payment of the royalty on the gas well as

provided in the lease to the owner of the portion of the land where said gas well is found extends the life of the lease upon the entire tract of land. *Pierce Oil Corporation v. Schacht*, 75 Okla. 101, 181 Pac. 731—Note, 16 A. L. R. 588.

Where a tract of land subject to an oil and gas lease is transferred to different parties, the purchaser of each portion takes the same subject to such lease; and, should the lessee thereafter discover and produce oil or gas from the leased premises, the purchaser is entitled to the royalties accruing from the oil and gas produced on the portion of the premises owned by him. *Id.*

Where an Indian allottee authorized by statute to execute a mining lease for ten years, with the right to collect and dispose of the royalties accruing thereunder without restriction, paid over to defendant one-half of such royalties after they had accrued, either voluntarily or pursuant to judgments of a State court, she being at the time a citizen and subject to suit, the United States cannot maintain an action at law to recover such payments, although they were made pursuant to an assignment executed before the royalties accrued, and which was void and could have been canceled at suit to the Government on behalf of the allottee. *United States v. Moore*, 261 Fed. 523.

A surety company, surety on a bond guaranteeing compliance with the terms of a full-blood oil and gas lease, made to the United States Government, is justified in paying the demands of the Government of rentals and charges claimed by the Government under the terms of an oil lease, where the lessee has failed to comply strictly with the terms provided in the lease and the regulations of the Department of the Interior for cancellation; since a bonding company for hire is not like an accommodation surety, dealing at arms' length with its obligee, but is held a strict compliance with the terms of the contract. *Mass. Bonding & Ins. Co. v. Lewis*, 80 Okla. 187, 195 Pac. 494.



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